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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

MICHAEL ROBLES,	)	1:08-cv-1297-JLT
	)	
Plaintiff,	)	DECISION AND ORDER ON PLAINTIFF’S
	)	SOCIAL SECURITY COMPLAINT
v.	)	(Doc. 2)
	)	
MICHAEL J. ASTRUE, Commissioner of	)	ORDER DIRECTING THE CLERK TO
Social Security,	)	ENTER JUDGMENT FOR DEFENDANT
	)	MICHAEL J. ASTRUE AND AGAINST
Defendant.	)	PLAINTIFF MICHAEL ROBLES
	)	

In this action, Plaintiff challenges the final decision of the Commissioner of Social Security (Commissioner) denying his February 18, 2000 application for Disability Insurance benefits (DIB). In that application, he claimed to have been disabled since January 10, 1992, due to back pain resulting from injury to a herniated disc. (A.R. 26, 98-102.)<sup>1</sup>. The parties have consented to the jurisdiction of the United States Magistrate Judge pursuant to 28 U.S.C. § 636(c)(1), and pursuant to the order of Judge Oliver W. Wanger of October 6, 2008, the matter has been assigned to the Magistrate Judge to conduct all further proceedings in this case, including entry of final judgment. It was assigned to the undersigned Magistrate Judge on December 29, 2009.

<sup>1</sup> Plaintiff later reported limitations from additional conditions, including hypertension, arthritis, muscle spasms, depression, anger, vision problems, and shortness of breath. (A.R. 111.)

1 The decision under review is that of Social Security Administration (SSA) Administrative  
2 Law Judge (ALJ) James E. Ross, dated June 22, 2006 (A.R. 25-31). The ALJ's decision was  
3 rendered after a hearing held on December 14, 2005, at which Plaintiff and his wife testified.  
4 (A.R. 367-88).

5 Previously another ALJ had issued a decision on Plaintiff's application. It was dated July  
6 24, 2002, and was rendered after a hearing held on June 27, 2002. (A.R. 345-66.) It was vacated  
7 by the Appeals Council with instructions for additional evaluation of Plaintiff's subjective  
8 complaints and mental impairment as well as development of evidence from a vocational expert  
9 ("VE") to clarify the effect of assessed limitations on the occupational base and to resolve any  
10 conflict between the VE's occupational evidence and the information in the Dictionary of  
11 Occupational Titles and the United States Department of Labor's Selected Characteristics of  
12 Occupations Defined in the Revised Dictionary of Occupational Titles at 342 (1993). (A.R. 25.)

13 After the last hearing held by ALJ Ross in December 2005, interrogatories were sent to  
14 vocational expert Kenneth Ferra, and his responses were proffered to Plaintiff's counsel. (A.R.  
15 292-323.) The Appeals Council denied Plaintiff's request for review of ALJ Ross's decision on  
16 January 14, 2008 (A.R. 16-20), and Plaintiff filed his complaint in this Court on September 2,  
17 2008. Briefing commenced on April 20, 2009, and was completed with the filing of Defendant's  
18 cross-motion for summary judgment and opposition to Plaintiff's opening brief on June 22, 2009.  
19 The matter has been submitted without oral argument to the Magistrate Judge.

#### 20 I. Jurisdiction

21 Plaintiff filed his complaint on September 2, 2008, more than sixty days after the mailing  
22 of the notice of decision on or about January 14, 2008. However, upon Plaintiff's request, the  
23 Appeals Council extended the time within which Plaintiff could file a civil action to thirty days  
24 from the date of receipt of the notice of extension dated July 30, 2008. (A.R. 15, 7.) Receipt of the  
25 notice of extension of time is deemed to be five days after the date of the notice. 20 C.F.R. §  
26 404.901. Accordingly, Plaintiff's filing of the action in this Court on September 2, 2008, was  
27 timely because it was within thirty days of August 5, 2008. 42 U.S.C. § 405(g)

#### 28 II. Standard and Scope of Review

1                   A. General Legal Standards

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

17                   In weighing the evidence and making findings, the Commissioner must apply the proper  
18 legal standards. Burkhart v. Bowen, 856 F.2d 1335, 1338 (9th Cir. 1988). This Court must review  
19 the whole record and uphold the Commissioner's determination that the claimant is not disabled if  
20 the Commissioner applied the proper legal standards, and if the Commissioner's findings are  
21 supported by substantial evidence. See, Sanchez v. Secretary of Health and Human Services, 812  
22 F.2d 509, 510 (9th Cir. 1987); Jones v. Heckler, 760 F.2d at 995. If the Court concludes that the  
23 ALJ did not use the proper legal standard, the matter will be remanded to permit application of the  
24 appropriate standard. Cooper v. Bowen, 885 F.2d 557, 561 (9<sup>th</sup> Cir. 1987).

25                   B. Presumption of Continuing Non-Disability

26                   In the decision being reviewed, the ALJ applied a presumption of continuing non-  
27 disability based on a previous ALJ's post-hearing decision, dated May 28, 1998, on a previous  
28 application for benefits. Plaintiff did not seek review of that decision, which included a finding

1 that Plaintiff could perform a broad range of light work. (A.R. 25.) The legal effect to be given  
2 such a decision is set forth in Chavez v. Bowen, 844 F.2d 691, 693-94 (9<sup>th</sup> Cir. 1988), in which it  
3 is recognized that where a claimant has been found not disabled in a prior decision of an ALJ after  
4 a hearing, there is a continuing presumption of non-disability that a claimant must overcome by  
5 proving changed circumstances indicating a greater disability. Plaintiff does not challenge the  
6 application of Chavez v. Bowen or of the presumption to the application being reviewed in this  
7 proceeding.

### 8 C. Pertinent Period of Review

9 Plaintiff's last insured date was December 31, 2000. Thus, Plaintiff was not entitled to a  
10 period of disability and DIB unless evidence established that Plaintiff was under a disability on or  
11 before December 31, 2000. (A.R. 25-26.) Hence, the relevant period for consideration regarding  
12 disability is from May 29, 1998, through December 31, 2000. (A.R. 25-26.)

### 13 III. Administrative Findings

14 The ALJ found that Plaintiff had not presented any new or material evidence warranting a  
15 change in his residual functional capacity (RFC). (A.R. 25.) During the pertinent interval from  
16 May 29, 1998, through December 31, 2000, Plaintiff had a severe impairment of moderate,  
17 degenerative disc disease of the lumbar spine and his depressive disorder and chronic obstructive  
18 pulmonary disease were only slight impairments. No impairment or combination thereof met or  
19 medically equaled a listed impairment. Plaintiff retained the RFC to lift and carry twenty pounds  
20 occasionally and ten pounds frequently, and to stand and walk six hours in an eight-hour work day  
21 with occasional stooping, crouching, kneeling, crawling, climbing stairs and ramps, and fingering;  
22 Plaintiff could not climb ropes, ladders, or scaffolds and had to avoid concentrated exposure to  
23 pulmonary irritants. (A.R. 28-29.) Plaintiff could not perform his past relevant work as a food  
24 sales clerk and winery worker (semi-skilled light work with the clerk's position requiring frequent  
25 fingering). (A.R. 30.) Considering that Plaintiff was a younger individual (forty-seven years old  
26 on the date last insured), with at least a high school education and the ability to communicate in  
27 English, and further considering Plaintiff's work experience and RFC, there were jobs existing in  
28 significant numbers that Plaintiff could have performed, including agricultural produce sorter and

1 housekeeping cleaner. (A.R. 30.) Hence, Plaintiff was not disabled at the pertinent time. (A.R.  
2 31.)

#### 3 IV. Plaintiff's Contention

4 The ALJ concluded that Plaintiff's medically determinable impairments could have been  
5 reasonably expected to produce the alleged symptoms, but that Plaintiff's statements concerning  
6 the intensity, duration, and limiting effects of these symptoms were not entirely credible. (A.R.  
7 29.) The sole contention raised in Plaintiff's brief is that in making his credibility findings, the  
8 ALJ failed to set forth clear and convincing reasons for his conclusions concerning Plaintiff's  
9 back pain.

#### 10 V. Administrative Record

##### 11 A. Testimony<sup>2</sup>

12 At the hearing held on December 14, 2005, Plaintiff confirmed that he had originally  
13 weighed up to 261 pounds. He believed that before December 31, 2000, he had suffered back  
14 problems affecting his ability to walk, but he was not sure how far he could walk. He testified  
15 that he used to do the lawn and do some housecleaning out of guilt at not bringing in money since  
16 he had stopped working. (A.R. 382.) The doctor had told him that his difficulty in walking was  
17 caused by muscle cramps, but Plaintiff guessed that the difficulty was a precursor to his present  
18 condition. (A.R. 382.) Plaintiff testified that he had not had any surgery but that he had an  
19 injection in his back "probably" sometime before 2000. (A.R. 383.)

20 Plaintiff's wife testified that he had back problems and pain since 1991. At that time she  
21 reported that he twisted his back to avoid a fall at work, which led to his stopping work in 1991  
22 because of back pain. (A.R. 373-74.) She reported that Plaintiff had abused heroin for eight to ten  
23 years and had been unsuccessful with methadone treatment. However, after being jailed in 1995,  
24 she testified that Plaintiff had maintained his sobriety upon release for about ten years. (A.R. 376,  
25 379.)

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26  
27 <sup>2</sup> The ALJ referred to additional subjective complaints of Plaintiff, such as his problems with his hands and  
28 mental problems. (A.R. 29.) However, Plaintiff does not challenge the reasoning concerning these matters; he raises  
only the ALJ's treatment of his complaint of back pain. Therefore, only the evidence pertinent to Plaintiff's back  
pain is summarized and discussed.

1                   B. Medical Record

2                   Records, including x-rays from the middle of 1996, showed that Plaintiff had mild-to-  
3 moderate degenerative joint disease that was treated with Motrin. (A.R. 183-84, 191.) In August  
4 1996, neurosurgeon, Dr. Charles J. Wrobel, opined that Plaintiff was not a candidate for surgery  
5 but opined that he was totally disabled due to his pain. (A.R. 202-03.) However, as of October 16,  
6 1996, Plaintiff was cleared to return to work, without restrictions. (A.R. 180.)

7                   On February 21, 2000, treating physician Leila Olivera, who practiced internal medicine,  
8 noted that Plaintiff had reported that his back pain was not responding to Motrin and that he  
9 wanted to continue on disability. Dr. Olivera noted a decreased range of motion in his back but no  
10 tenderness. As a result, her plan was to try Plaintiff on Medrol and Flexeril. (A.R. 165.) Later, on  
11 April 4, 2000, Plaintiff reported to Dr. Olivera that Dr. Wrobel was giving Plaintiff disability  
12 letters. He reported that, although the Flexeril helped his pain, he requested Dr. Olivera provide  
13 him a letter supporting a claim of permanent disability. (A.R. 162.) Nevertheless, Dr. Olivera  
14 wrote,

15                   1. Chronic pack pain. I doubt this could cause permanent disability. Looking at the  
16 x-ray in the past, it shows like a mild degenerative arthritis of the lumbosacral  
spine.

17 (A.R. 162.) Dr. Olivera's plan was to obtain an evaluation from neurologist, Dr. Stephen Helvie.  
18 (A.R. 162.) A note from Dr. Richard E. Helvie, reflects that on April 3, 2002, nerve conduction  
19 studies of Plaintiff's bilateral upper extremities showed severe bilateral CTS. (A.R. 255.)

20                   Consulting, examining physician Dr. Emanuel Dozier performed a comprehensive  
21 internal medicine evaluation in April 2000. (A.R. 217-21.) Plaintiff reported that he had suffered  
22 back pain for ten years with occasional radiation to both lower extremities. Plaintiff reported that  
23 he could stand fifteen minutes until he experienced pain. He stated that he could walk two blocks,  
24 and sit thirty minutes before he needed to stand or walk. He reported that he could not stoop or  
25 bend. However, Dr. Dozier observed Plaintiff ambulating without pain. The exam revealed  
26 normal muscle bulk and tone, some trigger points over the sacroiliac joints bilaterally with mild  
27 paravertebral muscle spasms in the lumbar area. Straight leg raising was positive on the right at  
28 forty-five degrees and negative on the left. (A.R. 219.) There was no significant atrophy, gait was

1 normal, and pinprick diminished in S2 distribution over right lower extremity. Dr. Dozier noted  
2 that Babinski was down-going bilaterally, motor strength was 5/5 in upper and lower extremities,  
3 and grip strength 5/5 bilaterally. (A.R. 219-220.) Dr. Dozier noted that the impression was mild  
4 osteoarthritis and chronic mechanical low back pain with mild radiculopathy. (A.R. 221.) Dr.  
5 Dozier opined that Plaintiff should be able to perform light work (occasionally lifting twenty  
6 pounds and frequently lifting ten pounds) without assistive devices, with no frequent bending,  
7 stooping, crawling, or crouching and with mild restriction in handling, restricted feeling and  
8 fingering, and restricted exposure to extremes of temperature. (A.R. 221.)

9         On June 7, 2000, a non-examining, state agency physician performed a RFC assessment of  
10 Plaintiff's degenerative disc disease in the lumbar spine, COPD, hypertension, and decreased  
11 vision. (A.R. 238-45.) The doctor determined that Plaintiff could perform light work (lift and  
12 carry twenty pounds occasionally and ten pounds frequently, with sitting and standing or walking  
13 for six hours in an eight-hour workday), but Plaintiff's back pain resulted in limitations in  
14 frequent balancing, only occasional climbing stairs or ramps, stooping, kneeling, crouching,  
15 crawling, fingering, and feeling. Also, the doctor determined that Plaintiff could never climb  
16 ladders, ropes, or scaffolds, and he had to avoid concentrated exposure to extremes of temperature  
17 and humidity, noise, and fumes. (A.R. 238-45.)

18         In August 2004 Dr. Sarupinder Bhangoo, who was board certified in internal medicine,  
19 conducted a "comprehensive internal medicine/hearings evaluation" which referred to records  
20 from 2003 through 2005, a period more distant from the pertinent period being considered. Dr.  
21 Bhangoo found Plaintiff had lumbar flexion of ninety degrees, extension of twenty-five degrees,  
22 and lateral flexion of twenty-five degrees with no deformity, tenderness, or muscle spasm. At the  
23 time, the straight leg raising test was negative bilaterally. He had motor strength of 5/5 in all  
24 extremities and the sensory exam revealed no decrease in pinprick or touch on either hand. He  
25 had normal reflexes and negative Babinski. The impression was lumbosacral degenerative disk  
26 disease by history and minor grade CTS. Dr. Bhangoo noted that Plaintiff had a good range of  
27 motion without any limitation of his physical activities. He noted an absence of localized  
28 tenderness, muscle spasms, or neurological deficits from the back pain. Plaintiff could lift and

1 carry 100 pounds occasionally and fifty pounds frequently, with no postural or manipulative  
2 limitations. (A.R. 315-26.)

3 Records from 2005 from doctors related to Delano Regional Medical Center reflect that  
4 Plaintiff was hospitalized in March 2005 for congestive heart failure. In September 2005, Dr.  
5 Vijaykumar Patel wrote in support of Plaintiff's request for benefits. Dr. Patel stated that due to  
6 Plaintiff's bacterial endocarditis, a large vegetation in his heart, congestive heart failure,  
7 hypertension, and severe edema, Plaintiff was "pretty much bed bound and debilitated, requiring  
8 others to help him with all aspects of daily living." (A.R. 328-338, 338.) Dr. Patel stated that  
9 Plaintiff was unable to perform work of any kind. (Id. at 338.)

## 10 VI. Credibility Findings

### 11 A. Legal Standards

12 The ALJ expressly found that Plaintiff's medically determinable impairments could have  
13 been reasonably expected to have produced the alleged symptoms; it was only the extent of the  
14 alleged subjective limitations that were subject to the negative finding.

15 Unless there is affirmative evidence that the applicant is malingering, where objective  
16 medical evidence establishes that the claimant suffers from an impairment that could reasonably  
17 produce the symptoms of which the applicant complains, an adverse credibility finding must be  
18 based on clear and convincing reasons. Carmickle v. Commissioner, Social Security  
19 Administration, 533 F.3d 1155, 1160 (9<sup>th</sup> Cir. 2008). In Orn v. Astrue, 495 F.3d 625, 635 (9<sup>th</sup> Cir.  
20 2007), the court summarized the pertinent standards for evaluating the sufficiency of an ALJ's  
21 reasoning in rejecting a claimant's subjective complaints:

22 An ALJ is not "required to believe every allegation of disabling pain" or  
23 other non-exertional impairment. See Fair v. Bowen, 885 F.2d 597, 603 (9<sup>th</sup>  
24 Cir.1989). However, to discredit a claimant's testimony when a medical  
25 impairment has been established, the ALJ must provide "specific, cogent reasons  
26 for the disbelief." Morgan, 169 F.3d at 599 (quoting Lester, 81 F.3d at 834). The  
27 ALJ must "cit[e] the reasons why the [claimant's] testimony is unpersuasive." Id.  
28 Where, as here, the ALJ did not find "affirmative evidence" that the claimant was a  
malingerer, those "reasons for rejecting the claimant's testimony must be clear and  
convincing." Id.

29 Social Security Administration rulings specify the proper bases for rejection  
of a claimant's testimony. See S.S.R. 02-1p (Cum. Ed.2002), available at Policy  
Interpretation Ruling Titles II and XVI: Evaluation of Obesity, 67 Fed.Reg.



1 57,859-02 (Sept. 12, 2002); S.S.R. 96-7p (Cum. Ed.1996), available at 61 Fed.Reg.  
2 34,483-01 (July 2, 1996). An ALJ's decision to reject a claimant's testimony cannot  
3 be supported by reasons that do not comport with the agency's rules. See 67  
4 Fed.Reg. at 57860 ("Although Social Security Rulings do not have the same force  
5 and effect as the statute or regulations, they are binding on all components of the  
6 Social Security Administration, ... and are to be relied upon as precedents in  
7 adjudicating cases."); see Daniels v. Apfel, 154 F.3d 1129, 1131 (10th Cir.1998)  
8 (concluding that ALJ's decision at step three of the disability determination was  
9 contrary to agency regulations and rulings and therefore warranted remand).  
10 Factors that an ALJ may consider in weighing a claimant's credibility include  
11 reputation for truthfulness, inconsistencies in testimony or between testimony and  
12 conduct, daily activities, and "unexplained, or inadequately explained, failure to  
13 seek treatment or follow a prescribed course of treatment." Fair, 885 F.2d at 603;  
14 see also Thomas, 278 F.3d at 958-59.

9 Additional factors to be considered in weighing credibility include the location, duration,  
10 frequency, and intensity of the claimant's pain or other symptoms; factors that precipitate and  
11 aggravate the symptoms; the type, dosage, effectiveness, and side effects of any medication the  
12 claimant takes or has taken to alleviate the symptoms; treatment, other than medication, the  
13 person receives or has received for relief of the symptoms; any measures other than treatment the  
14 claimant uses or has used to relieve the symptoms; and any other factors concerning the  
15 claimant's functional limitations and restrictions due to pain or other symptoms. 20 C.F.R. §§  
16 404.1529, 416.929; S.S.R. 96-7p.

17 With respect to the course of analysis directed by the regulations, the ALJ is first obligated  
18 to consider all symptoms and the extent to which the symptoms can reasonably be accepted as  
19 consistent with the objective medical evidence and other evidence. 20 C.F.R. §§ 404.1529(a),  
20 416.929(a). Once it is determined that there is a medically determinable impairment that could  
21 reasonably be expected to produce the claimant's symptoms, the ALJ must then evaluate the  
22 intensity and persistence of the symptoms to determine how the symptoms limit the capacity for  
23 work. §§ 404.1529(b), (c); 416.929(b), (c). The ALJ will consider all available evidence. To the  
24 extent that the claimant's symptoms can be reasonably accepted as consistent with the objective  
25 medical evidence and other evidence, the symptoms will be determined to diminish the claimant's  
26 capacity for basic work activities. §§ 404.1529(c)(4); 416.929(c)(4). A claimant's statements will  
27 not be rejected solely because unsubstantiated by the available objective medical evidence. §§  
28 404.1529(c)(2); 416.929(c)(2).

1 Further, the pertinent Social Security Ruling requires the ALJ to articulate the reasons  
2 supporting the ALJ's analysis:

3 ...When evaluating the credibility of an individual's statements, the adjudicator  
4 must consider the entire case record and give specific reasons for the weight given  
to the individual's statements.

5 The finding on the credibility of the individual's statements cannot be based  
6 on an intangible or intuitive notion about an individual's credibility. The reasons  
7 for the credibility finding must be grounded in the evidence and articulated in the  
8 determination or decision. It is not sufficient to make a conclusory statement that  
9 "the individual's allegations have been considered" or that "the allegations are (or  
10 are not) credible." It is also not enough for the adjudicator simply to recite the  
11 factors that are described in the regulations for evaluating symptoms. The  
12 determination or decision must contain specific reasons for the finding on  
credibility, supported by the evidence in the case record, and must be sufficiently  
specific to make clear to the individual and to any subsequent reviewers the weight  
the adjudicator gave to the individual's statements and the reasons for that weight.  
This documentation is necessary in order to give the individual a full and fair  
review of his or her claim, and in order to ensure a well-reasoned determination or  
decision.

13 S.S.R. 96-7 at 4.

14 B. Analysis

15 The specific credibility findings under review will be considered in the context of the  
16 entire decision. The ALJ first reviewed the medical record, expressly noting the objective indicia  
17 of moderate degenerative disc disease in the x-rays of the lumbar spine taken in April 2000. (A.R.  
18 28.) The ALJ noted:

19 The related clinical note indicated that the claimant wanted the "disability letter for  
20 the SSI," but the doctor doubted that the claimant's condition could cause  
21 permanent disability (Exhibit B-1F, p. 7 [A.R. 156-194]). There is no evidence that  
the claimant sought or received any significant subsequent treatment.

22 (A.R. 28.) It is established that a physician's opinion regarding a claimant's ability to work is  
23 appropriately considered. Moncada v. Chater, 60 F.3d 521, 524 (9<sup>th</sup> Cir. 1995). Inconsistencies  
24 between a plaintiff's claims and the observations of medical staff can constitute clear and  
25 convincing reasons for discounting claims of incapacity. Morgan v. Commissioner, 169 F.3d 595,  
26 599-600 (9<sup>th</sup> Cir. 1999).

27 Here, the ALJ relied on the opinion of a treating physician at a pertinent time to the effect  
28 that it was quite doubtful that Plaintiff's moderate disc condition could cause a permanent

1 disability. Considering the date of the observation and the treating relationship between Dr.  
2 Olivera and Plaintiff, the ALJ's reasoning in this regard was clear and convincing.

3 An ALJ may rely on the conservative nature of treatment or a lack of treatment in rejecting  
4 a claimant's subjective complaint of pain. Johnson v. Shalala 60 F.3d 1428, 1433-34 (9<sup>th</sup> Cir.  
5 1995). Particularly probative is an unexplained or inadequately explained failure to seek treatment  
6 or follow a prescribed or directed course of treatment that can improve the impairment to the  
7 extent that the person will not be disabled and thus restore the ability to work. Orn v. Astrue, 495  
8 F.3d 625, 636 (9<sup>th</sup> Cir. 2007). This reasoning is appropriate where the symptom or phenomenon is  
9 such that a person's normal reaction to it is to seek relief, and where modern medicine is often  
10 successful in providing relief. One such example is a failure to seek relief from disabling pain  
11 because a person's normal reaction is to seek relief from pain, and because modern medicine is  
12 often successful in providing some relief. Orn, 495 F.3d at 638.

13 Here, Dr. Olivera's notes documented the improvement in Plaintiff's back pain that  
14 Plaintiff experienced with the Flexeril prescribed by Dr. Olivera. (A.R. 162.) Further, the ALJ  
15 noted that although Plaintiff testified that he had chronic back pain, he admitted that he had  
16 undergone no back surgery, and his only treatment was a shot. (A.R. 29.) The record supports a  
17 conclusion that although Plaintiff's pain was no longer responding to Motrin, it was nevertheless  
18 subject to treatment with other medication that at the least could have significantly improved  
19 Plaintiff's symptoms. However, there is no indication that, aside from a single injection, Plaintiff  
20 was ever treated other than with oral medication or even with medication appropriate for severe  
21 pain. The Court concludes that the ALJ's reliance on Plaintiff's conservative treatment was clear  
22 and convincing in the circumstances of this case.

23 Further, the ALJ's references to Dr. Olivera's note, Plaintiff's desire for disability benefits,  
24 and Plaintiff's failure to seek or receive significant subsequent treatment are reasonably  
25 understood as reflecting a basic credibility finding. This reflected the inconsistency between mild  
26 findings noted by Dr. Olivera upon examining Plaintiff and the apparent efficacy of conservative  
27 treatment and Plaintiff's subjective complaints. Included in the factors that an ALJ may consider  
28 in weighing a claimant's credibility are the claimant's reputation for truthfulness; inconsistencies

1 either in the claimant's testimony or between the claimant's testimony and the claimant's conduct,  
2 daily activities, or work record; and testimony from physicians and third parties concerning the  
3 nature, severity, and effect of the symptoms of which the claimant complains. Thomas v.  
4 Barnhart, 278 F.3d 947, 958-59 (9<sup>th</sup> Cir. 2002). Further, although the inconsistency of objective  
5 findings with subjective claims may not be the sole reason for rejecting subjective complaints of  
6 pain, Light v. Chater, 119 F.3d 789, 792 (9<sup>th</sup> Cir. 1997), it is one factor which may be considered  
7 with others, Moisa v. Barnhart, 367 F.3d 882, 885 (9<sup>th</sup> Cir. 2004); Morgan v. Commissioner 169  
8 F.3d 595, 600 (9<sup>th</sup> Cir. 1999).

9 Here, the Court finds clear and convincing the ALJ's reliance on the inconsistencies  
10 presented by Plaintiff. The ALJ concluded that Plaintiff was more focused on disability than the  
11 relatively mild objective signs warranted and who continued to assert a subjective inability to  
12 work despite improvement in symptoms. Because the ALJ stated the foregoing clear and  
13 convincing reasons, the ALJ could appropriately rely on the minimal findings reflected in the  
14 objective medical evidence concerning Plaintiff's back pain. The ALJ referred to the mild  
15 findings and the treating doctor's doubt as to any disabling seriousness (A.R. 28) as well as to the  
16 consulting examiner's findings and opinion of mild osteoarthritis with mild radiculopathy (A.R.  
17 29). As the detailed summary of the medical evidence reflects, this reasoning was supported by  
18 substantial evidence in the record and is clear and convincing in force considering all the  
19 circumstances of the present case.

20 Accordingly, the Court concludes that the ALJ cited clear and convincing reasons for  
21 rejecting Plaintiff's subjective complaints regarding the intensity, duration, and limiting effects of  
22 his symptoms, and that the ALJ's reasons were properly supported by the record and sufficiently  
23 specific to allow this Court to conclude that the ALJ rejected the Plaintiff's testimony on  
24 permissible grounds and did not arbitrarily discredit Plaintiff's testimony.

25 VII. Disposition

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

1           Accordingly, the Court AFFIRMS the administrative decision of the Defendant  
2 Commissioner of Social Security and DENIES Plaintiff's Social Security complaint.

3           The Clerk of the Court IS DIRECTED to enter judgment for Defendant Michael J. Astrue,  
4 Commissioner of Social Security, and against Plaintiff Michael Robles.

5  
6 IT IS SO ORDERED.

7 Dated: February 9, 2010

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE

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