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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

JAMES WALKER,  
  
Plaintiff,  
  
v.  
  
COMMISSIONER OF SOCIAL SECURITY,  
  
Defendant.

Case No. 1:13-cv-01669-SAB  
  
ORDER DENYING PLAINTIFF’S SOCIAL  
SECURITY APPEAL  
  
(ECF Nos. 12, 16, 17)

**I.**

**INTRODUCTION**

Plaintiff James Walker (“Plaintiff”) seeks judicial review of a final decision of the Commissioner of Social Security (“Commissioner” or “Defendant”) denying his application for supplemental social security income pursuant to the Social Security Act. The matter is currently before the Court on the parties’ briefs, which were submitted, without oral argument, to Magistrate Judge Stanley A. Boone.<sup>1</sup>

Plaintiff suffers from diabetes, obesity, and borderline intellectual functioning. For the reasons set forth below, Plaintiff’s Social Security appeal shall be denied.

**II.**

**FACTUAL AND PROCEDURAL BACKGROUND**

Plaintiff protectively filed an application for supplemental social security income on November 17, 2010. (AR 49.) Plaintiff’s application was initially denied on March 8, 2011, and

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<sup>1</sup> The parties have consented to the jurisdiction of the United States Magistrate Judge. (See ECF Nos. 7, 8.)

1 denied upon reconsideration on August 12, 2011. (AR 89-93, 99-103.) Plaintiff requested and  
2 received a hearing before Administrative Law Judge Christopher Larsen (“the ALJ”). Plaintiff  
3 appeared for a hearing on June 18, 2012. (AR 32-48.) On June 28, 2012, the ALJ found that  
4 Plaintiff was not disabled. (AR 9-21.) The Appeals Council denied Plaintiff’s request for  
5 review on August 20, 2013. (AR 1-3.)

6 **A. Hearing Testimony**

7 When Plaintiff arrived at the June 18, 2012 hearing his attorney was not present. (AR  
8 34.) The ALJ contacted counsel’s office and was told that Plaintiff had been informed that  
9 counsel had withdrawn from the case. (AR 34.) The ALJ explained Plaintiff’s options and  
10 inquired whether Plaintiff wished to postpone the hearing to obtain representation. (AR 34-35.)  
11 Plaintiff decided to testify at the hearing without the assistance of counsel. (AR 35.)

12 Plaintiff was born on April 2, 1965, and was 47 years old on the date of the hearing. (AR  
13 37.) Plaintiff started, but did not finish the eleventh grade. (AR 36.) Plaintiff has worked as  
14 roofer, laying sod for highway landscaping, and pulling parts and dismantling at a wrecking  
15 yard, (AR 37-40). Plaintiff also worked at a radiator repair shop, in chicken packaging, and as a  
16 janitor. (AR 46.)

17 Plaintiff is mainly unable to work due to pain in his feet from his diabetes. (AR 40.)  
18 Plaintiff is able to walk for about 45 minutes and then he feels like there is something in the  
19 middle of his foot and both his feet go numb. (AR 41.) When Plaintiff tells his doctors about his  
20 feet they tell him his feet are alright and will not check it. (AR 41.) Plaintiff had some testing  
21 done and was told he has nerve damage. (AR 41.) Plaintiff would be able to work if he did not  
22 have the problems with his feet. (AR 42.)

23 On a typical day, Plaintiff takes a walk or rides his bike. (AR 42.) Plaintiff is living with  
24 a friend and tries to wash dishes, vacuum, sweep, and cut the yard. (AR 43.) It takes him a long  
25 time, but he is able to get it done. (AR 43.) Plaintiff can lift 30 to 35 pounds. (AR 43.) Plaintiff  
26 can be on his feet for an hour and then he will start feeling pain all the way up his thigh. (AR 43-  
27 44.) Plaintiff cannot sit for more than 20 to 30 minutes or he will start to stiffen up. (AR 44.)

1 A vocational expert (“VE”), Carly Coughlin, testified at the hearing. (AR 45-48.) The  
2 VE testified that Plaintiff’s prior work experience is roofer, Dictionary of Occupational Title  
3 (“DOT”) 866.381-010, medium, SVP 7; landscaper, DOT 408.687-014, heavy, SVP 2; parts  
4 clerk, DOT 222.367-042, heavy, SVP 3; radiator repair DOT 620.381-010, medium, SVP 6;  
5 janitor, DOT 381.167-018, medium, SVP 2; and hand packager, DOT 920.587-018, medium,  
6 SVP 2. (AR 45.)

7 The ALJ presented a hypothetical of an individual with Plaintiff’s age, education, and  
8 work experience who can perform medium physical exertion, but is limited to simple repetitive  
9 tasks. (AR 47.) The VE opined that this individual would be able to work as a hand packager,  
10 676,000 jobs nationally and 93,000 in California; and a janitor, 2 million jobs nationally, and  
11 200,000 in California. (AR 47.) This individual would also be able to work as a laundry laborer,  
12 DOT 361.687-018, medium, SVP 2, with 395,000 jobs nationally and 40,000 in the state; golf  
13 range attendant, DOT 341.683-010, SVP 2, 257,000 jobs nationally and 40,000 in the state; and  
14 kitchen helper, DOT 318.687-010, SVP 2, medium, with 500,000 jobs nationally, and 66,000 in  
15 the state. (AR 47.)

16 The ALJ presented a second hypothetical of an individual of Plaintiff’s age, education,  
17 and work experience, who can lift and carry 20 pounds occasionally and 10 pounds frequently;  
18 can stand and walk 2 to 3 hours in an 8 hour day and can sit only 2 to 3 hours in an 8 hour day.  
19 (AR 48.) The VE opined that there would be no work which this individual could perform. (AR  
20 48.)

21 **B. ALJ Findings**

22 Plaintiff has not engaged in substantial gainful activity since November 17, 2010. (AR  
23 14.) Plaintiff has the following severe impairments: diabetes, obesity, and borderline intellectual  
24 functioning. (AR 14.) Plaintiff has no impairment or combination of impairments that meet or  
25 medical equal the severity of one of the listed impairments. (AR 14.) Plaintiff has the residual  
26 functional capacity to lift and carry 50 pounds occasionally and 25 pounds frequently; stand and  
27 walk up to 6 hours in an 8 hour day, and sit up to 6 hours in an 8 hour day, but he can only  
28 perform simple, repetitive tasks. (AR 16.)

1 Plaintiff can perform past relevant work as a hand packer and other jobs in the national  
2 economy. (AR 19.) Plaintiff has not been under a period of disability as defined in the Social  
3 Security Act, since the date he applied for supplemental security income. (AR 21.)

### 4 III.

#### 5 LEGAL STANDARD

6 Congress has provided that an individual may obtain judicial review of any final decision  
7 of the Commissioner of Social Security regarding entitlement to benefits. 42 U.S.C. § 405(g).  
8 In reviewing findings of fact in respect to the denial of benefits, this court “reviews the  
9 Commissioner’s final decision for substantial evidence, and the Commissioner’s decision will be  
10 disturbed only if it is not supported by substantial evidence or is based on legal error.” Hill v.  
11 Astrue, 698 F.3d 1153, 1158 (9th Cir. 2012). “Substantial evidence” means more than a  
12 scintilla, but less than a preponderance. Smolen v. Chater, 80 F.3d 1273, 1279 (9th Cir. 1996)  
13 (internal quotations and citations omitted). “Substantial evidence is relevant evidence which,  
14 considering the record as a whole, a reasonable person might accept as adequate to support a  
15 conclusion.” Thomas v. Barnhart, 278 F.3d 947, 955 (9th Cir. 2002) (quoting Flaten v. Sec’y of  
16 Health & Human Servs., 44 F.3d 1453, 1457 (9th Cir. 1995)).

17 “[A] reviewing court must consider the entire record as a whole and may not affirm  
18 simply by isolating a specific quantum of supporting evidence.” Hill, 698 F.3d at 1159 (quoting  
19 Robbins v. Social Security Administration, 466 F.3d 880, 882 (9th Cir. 2006). However, it is not  
20 this Court’s function to second guess the ALJ’s conclusions and substitute the court’s judgment  
21 for the ALJ’s. See Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005) (“Where evidence is  
22 susceptible to more than one rational interpretation, it is the ALJ’s conclusion that must be  
23 upheld.”)

### 24 IV.

#### 25 DISCUSSION AND ANALYSIS

26 Plaintiff contends that the ALJ erred by failing to include all the limitations of Dr. Ying<sup>2</sup>

27 \_\_\_\_\_  
28 <sup>2</sup> Plaintiff refers to the agency physician as Dr. Yang, however, the record demonstrates that the form was completed  
by Dr. Karen Ying. (AR 60.)

1 in his hypothetical to the VE and failing to provide clear and convincing reasons to reject  
2 Plaintiff testimony. (Opening Brief, ECF No. 12.)

3 **A. Hypothetical Presented to VE**

4 Plaintiff contends that the hypothetical presented to the VE did not include Dr. Ying's  
5 finding that Plaintiff was moderately limited in many areas and markedly limited in his ability to  
6 carry out detailed instructions. (ECF No. 12 at 5.) Further, Dr. Ying opined that Plaintiff has  
7 decreased motivation for socialization, but should be able to interact superficially for non-public  
8 jobs. (Id.)

9 Defendant counters that the ALJ did account for Dr. Ying's finding that Plaintiff was  
10 markedly limited in his ability to carry out detailed instructions by limiting Plaintiff to only  
11 simple repetitive tasks which precluded Plaintiff from work involving detailed instructions.  
12 (Def.'s Cross Mot. for Summary Judgment 6, ECF No. 16.) Defendant also argues that Dr.  
13 Ying's finding that Plaintiff had the ability to interact with co-workers, supervisors, and  
14 interaction with the public properly translated Plaintiff's functional limitations into a functional  
15 capacity opinion which was presented to the VE at the hearing. (Id.)

16 Plaintiff replies that the residual functional capacity is under inclusive and the ALJ erred  
17 for failing to provide any reason for rejecting certain of Dr. Ying's opinions. (Plaintiff's Reply  
18 4, ECF No. 17.)

19 "In order for the testimony of a VE to be considered reliable, the hypothetical posed must  
20 include 'all of the claimant's functional limitations, both physical and mental' supported by the  
21 record." Thomas v. Barnhart, 278 F.3d 947, 956 (9th Cir. 2002).

22 Dr. Ying, a state agency physician, completed a disability determination explanation on  
23 March 2, 2011. (AR 49-60.) Dr. Ying prepared a psychiatric review technique and found that  
24 Plaintiff had mild restriction of activities of daily living, and moderate difficulties in maintaining  
25 social functioning and maintaining concentration, persistence or pace. (AR 54.) Dr. Ying also  
26 completed a residual functional capacity assessment. Dr. Ying found that Plaintiff was not  
27 significantly limited in his ability to remember locations and work-like procedures and ability to  
28 understand and remember very short and simple instruction. (AR 56.) Plaintiff was moderately

1 limited in his ability to understand and remember detailed instructions. (AR 56.) Dr. Ying  
2 stated that Plaintiff has decreased memory, but can follow simple directions and has sustained  
3 concentration and persistence limitations. (AR 56.)

4 Dr. Ying found Plaintiff was not significantly limited in his ability to carry out very short  
5 and simple instructions, ability to work in coordination or in proximity to others without being  
6 distracted by them, and ability to make simple work-related decisions. (AR 56-57.) Plaintiff  
7 was moderately limited in his ability to maintain attention and concentration for extended  
8 periods; ability to perform activities within a schedule, maintain regular attendance, and be  
9 punctual within customary tolerances; ability to sustain an ordinary routine without special  
10 supervision; and ability to complete a normal workday and workweek without interruptions from  
11 psychologically based symptoms and to perform at a consistent pace without an unreasonable  
12 number and length of rest periods. (AR 56-57.) Dr. Ying further clarified that Plaintiff indicates  
13 that he feels tired and like laying down most days and can have moderate limitations in  
14 motivation to sustain concentration, persistence, and pace. (AR 57.) However, Plaintiff should  
15 be able to sustain concentration, persistence, and pace for simple tasks. (AR 57.) Plaintiff was  
16 found to be markedly limited in his ability to carry out detailed instructions. (AR 56.)

17 Dr. Ying found that Plaintiff was not significantly limited in social interaction except that  
18 he was moderately limited in his ability to interact appropriately with the general public and  
19 ability to accept instructions and respond appropriately to criticism from supervisors. (AR 58.)  
20 Dr. Ying stated that Plaintiff had decreased motivation for socialization, but should be able to  
21 interact superficially for non-public jobs. (AR 57.)

22 Dr. Ying found that Plaintiff was not significantly limited in his ability to be aware of  
23 normal hazards and take appropriate precautions, and ability to travel in unfamiliar places or use  
24 public transportation. (AR 57.) Plaintiff was moderately limited in his ability to respond  
25 appropriately to changes in the work setting; ability to set realistic goals or make plans  
26 independently of others; and had moderate limitations in his motivation for change, but should  
27 be able to make simple adaptations. (AR 57.)

28 Dr. Ying opined that Plaintiff had adequate cognitive ability to perform 1 and 2 step

1 tasks; was able to sustain concentration for 2 hour increments and 40 hour work week; was able  
2 to interact with co-workers, supervisors, and have interaction with the public; and was capable of  
3 adapting to routine changes in the work environment. (AR 58.)

4 While Plaintiff argues that the ALJ failed to include Dr. Ying's finding that he was  
5 markedly limited in his ability to carry out detailed instructions, the hypothetical presented to the  
6 VE limited the individual to simple repetitive tasks. This takes into consideration his marked  
7 limitation to carry out detailed instructions and is consistent with Dr. Ying's finding that Plaintiff  
8 had adequate cognitive ability to perform 1 and 2 step tasks.

9 Plaintiff is correct that the ALJ is required to discuss significant probative evidence,  
10 Vincent v. Heckler, 739 F.2d 1393, 1394 (9th Cir. 1984), however this does not require the ALJ  
11 to include every finding made by the physician in the hypothetical presented to the ALJ. Dr.  
12 Ying made specific findings in each area and then reduced those findings to a residual functional  
13 capacity. Dr. Ying considered Plaintiff's marked limitations in his ability to carry out detailed  
14 instructions and limitations on interacting with the public in determining Plaintiff's residual  
15 functional capacity. Dr. Ying's conclusion subsumed findings in each individual area within the  
16 residual functional capacity assessment that she set forth. The ALJ did not reject the findings of  
17 Dr. Ying. See Stubbs-Danielson v. Astrue, 539 F.3d 1169 (9th Cir. 2008) (ALJ's assessment of a  
18 claimant adequately captures restrictions where the assessment is consistent with restrictions  
19 identified in the medical testimony).

20 The ALJ also gave great weight to Dr. Swanson's findings which included that Plaintiff  
21 could relate appropriately to others in a job setting because he had an opportunity to exam  
22 Plaintiff and offered his opinion based on the examination signs and findings. (AR 18-19.) Dr.  
23 Swanson found that Plaintiff:

24  
25 is able to maintain concentration and relate appropriately to others in a job setting.  
26 He would be able to handle funds in his own best interest. He is expected to  
27 understand, carry out, and remember simple instructions. He is judged able to  
28 respond appropriately to usual work situations, such as attendance, safety, and the  
like. Changes in routine would not be very problematic for him. There do not  
appear to be substantial restrictions in daily activities. Difficulties in maintaining  
social relationships do not appear to be present.

1 (AR 322.) Dr. Swanson did not find Plaintiff limited in his ability to interact with the public.  
2 Substantial evidence supports the hypothetical presented to the VE.

3 Further, even assuming the ALJ erred by failing to include a limitation of working with  
4 the public, it would be harmless error. The harmless error rule applies in Social Security cases.  
5 McLeod v. Astrue, 640 F.3d 881, 888 (9th Cir. 2011). The reviewing court can determine from  
6 the "circumstances of the case" whether further administrative review is necessary to determine  
7 whether there was prejudice from the error." McLeod, 640 F.3d at 888. Mere probability of  
8 error is not enough. Id.

9 The Social Security rulings state:

10 The basic mental demands of competitive, remunerative, unskilled work include  
11 the abilities (on a sustained basis) to understand, carry out, and remember simple  
12 instructions; to respond appropriately to supervision, coworkers, and usual work  
13 situations; and to deal with changes in a routine work setting.

13 . . .

14 Where there is no exertional impairment, unskilled jobs at all levels of exertion  
15 constitute the potential occupational base for persons who can meet the mental  
16 demands of unskilled work. These jobs ordinarily involve dealing primarily with  
17 objects, rather than with data or people, and they generally provide substantial  
18 vocational opportunity for persons with solely mental impairments who retain the  
19 capacity to meet the intellectual and emotional demands of such jobs on a  
20 sustained basis.

21 Titles II & XVI: Capability to Do Other Work-Themedical-Vocational Rules as a Framework for  
22 Evaluating Solely Nonexertional Impairments, SSR 85-15, 1985 WL 56857, (S.S.A. 1985).

23 As the ruling states these unskilled jobs identified by the VE involve dealing primarily  
24 with objects, rather than data or people. The ALJ found that Plaintiff was able to work as a hand  
25 packager, which is an unskilled job. (AR 20.) Reviewing the DOT descriptions for this and the  
26 other jobs identified by the ALJ shows that they do not involve significant interaction with the  
27 public. DOT 920.587-018 (Hand Packager);<sup>3</sup> DOT 361.687-018 (Laundry Laborer);<sup>4</sup> DOT

28 <sup>3</sup> Packages materials and products manually, performing any combination of following duties: Cleans packaging  
containers. Lines and pads crates and assembles cartons. Obtains and sorts product. Wraps protective material  
around product. Starts, stops, and regulates speed of conveyor. Inserts or pours product into containers or fills  
containers from spout or chute. Weighs containers and adjusts quantity. Nails, glues, or closes and seals containers.  
Labels containers, container tags, or products. Sorts bundles or filled containers. Packs special arrangements or  
selections of product. Inspects materials, products, and containers at each step of packaging process. DOT 920.587-  
018 1991 WL 687916.



1 341.683-010 (Golf Range Attendant);<sup>5</sup> DOT 318.687-010 (Kitchen Helper).<sup>6</sup>

2 Substantial evidence exists that the hypothetical posed to the VE included all of  
3 Plaintiff's functional mental limitations. Alternately, to the extent that the hypothetical failed to  
4 include a limitation on contact with the public, the jobs identified by ALJ do not require  
5 significant contact with the public and such error would be harmless.

6 **B. Credibility**

7 Plaintiff argues that the ALJ erred by failing to articulate legally sufficient reasons to  
8 reject his testimony. (ECF No. 12 at 10.) Defendant counters that the regulations expressly  
9 prohibit granting disability benefits based on a claimant's subjective complaints. (ECF No. 16 at  
10 7.) Defendant contends that the ALJ properly relied on the medical evidence to find that  
11 Plaintiff's limitations were not as severe as alleged and the ALJ fulfilled his duty to adequately  
12 articulate specific reasons supported by substantial evidence to support his credibility findings.  
13 (Id. at 8-9.)

14 "An ALJ is not required to believe every allegation of disabling pain or other non-

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15  
16 <sup>4</sup> Prepares laundry for processing and distributes laundry, performing any combination of following duties: Opens  
17 bundles of soiled laundry. Places bundles onto conveyor belt or drops down chute for distribution to marking and  
18 classification sections. Weighs laundry on scales and records weight on tickets. Removes bundles from conveyor  
19 and distributes to workers, using hand truck. Fastens identification pins or clips onto laundry to facilitate subsequent  
20 assembly of customers' orders. Sorts net bags containing clean wash according to customers' identification tags.  
21 Sorts empty net bags according to color and size. Collects identification tags from lots of laundered articles for  
22 reuse. Moistens clean wash preparatory to ironing. Operates power hoist to load and unload washing machines and  
23 extractors. Stacks linen supplies on storage room shelves. Unloads soiled linen from trucks. DOT 361.687-018,  
1991 WL 672992

24 <sup>5</sup> Performs combination of following duties at golf driving range: Picks up golf balls by hand or drives vehicle  
25 equipped with trailer that automatically picks up balls as vehicle moves over fairway. Starts revolving tumbler filled  
26 with soapy water and immerses golf balls to remove dirt, grass stain, and club marks. Removes and rinses washed  
27 balls. Applies liquid cleaner to head and shank of golf clubs and buffs with steel wool. Replaces golf balls and  
28 clubs in racks for use by driving range patrons. May perform minor maintenance on benches, using hand tools.  
DOT 341.683-010, 1991 WL 672839.

24 <sup>6</sup> Performs any combination of following duties to maintain kitchen work areas and restaurant equipment and  
25 utensils in clean and orderly condition: Sweeps and mops floors. Washes worktables, walls, refrigerators, and meat  
26 blocks. Segregates and removes trash and garbage and places it in designated containers. Steam-cleans or hoses-out  
27 garbage cans. Sorts bottles, and breaks disposable ones in bottle-crushing machine. Washes pots, pans, and trays by  
28 hand. Scrapes food from dirty dishes and washes them by hand or places them in racks or on conveyor to  
dishwashing machine. Polishes silver, using burnishing-machine tumbler, chemical dip, buffing wheel, and hand  
cloth. Holds inverted glasses over revolving brushes to clean inside surfaces. Transfers supplies and equipment  
between storage and work areas by hand or by use of hand truck. Sets up banquet tables. Washes and peels  
vegetables, using knife or peeling machine. Loads or unloads trucks picking up or delivering supplies and food.  
DOT 318.687-010, 1991 WL 672755.

1 exertional impairment.” Orn v. Astrue, 495 F.3d 625, 635 (9th Cir. 2007) (internal punctuation  
2 and citations omitted). Determining whether a claimant's testimony regarding subjective pain or  
3 symptoms is credible requires the ALJ to engage in a two-step analysis. Molina v. Astrue, 674  
4 F.3d 1104, 1112 (9th Cir. 2012). The ALJ must first determine if "the claimant has presented  
5 objective medical evidence of an underlying impairment which could reasonably be expected to  
6 produce the pain or other symptoms alleged." Lingenfelter v. Astrue, 504 F.3d 1028, 1036 (9th  
7 Cir. 2007) (internal punctuation and citations omitted). This does not require the claimant to  
8 show that her impairment could be expected to cause the severity of the symptoms that are  
9 alleged, but only that it reasonably could have caused some degree of symptoms. Smolen, 80  
10 F.3d at 1282.

11 Second, if the first test is met and there is no evidence of malingering, the ALJ can only  
12 reject the claimant's testimony regarding the severity of her symptoms by offering "clear and  
13 convincing reasons" for the adverse credibility finding. Carmickle v. Commissioner of Social  
14 Security, 533 F.3d 1155, 1160 (9th Cir. 2008). The ALJ must specifically make findings that  
15 support this conclusion and the findings must be sufficiently specific to allow a reviewing court  
16 to conclude the ALJ rejected the claimant's testimony on permissible grounds and did not  
17 arbitrarily discredit the claimant's testimony. Moisa v. Barnhart, 367 F.3d 882, 885 (9th Cir.  
18 2004) (internal punctuation and citations omitted).

19 1. ALJ Findings

20 The ALJ found that Plaintiff “testified, and understandably may honestly believe, that his  
21 impairments are disabling.” (AR 18.) However, the ALJ “must accurately determine the degree  
22 of his impairments based upon the totality of the other evidence in the record.” (AR 18.) The  
23 ALJ found that the medical evidence is not consistent with Plaintiff’s complaints and the medical  
24 findings do not support the existence of limitations greater than those included in his residual  
25 functional capacity. (AR 17-18.) In 2009, although Plaintiff had diabetes since 2004 he was not  
26 taking any prescribed medication. He was taking herbs and over-the-counter medications. (AR  
27 18.) Plaintiff began taking insulin and his HBA1c was 10.4 in June 2009. (AR 18.) In January  
28 2011, Plaintiff complained of pain and paresthesia in both feet, but his examination was within

1 normal limits. (AR 18.)

2 Plaintiff was examined by Dr. Swanson in February 2011 who noted that Plaintiff's  
3 attitude was cooperative, but not engaging. (AR 18.) Dr. Swanson found Plaintiff reluctant to  
4 provide much background information and that his effort was not optimal resulting in a low  
5 estimate of Plaintiff's intelligence. (AR 18.)

6 The ALJ also found that Plaintiff's daily activities are inconsistent with his complaints of  
7 disabling symptoms, limitations, and social functioning. (AR 19.) Based upon the entire record  
8 and Plaintiff's testimony, the evidence does not support Plaintiff's allegations of total disability.  
9 (AR 19.) Treatment notes do not sustain the allegations of disabling pain and limitations and the  
10 consultative examinations support the residual functional capacity. (AR 19.)

11 2. The ALJ provided clear and convincing reasons to find Plaintiff's allegations of  
12 disabling symptoms not credible

13 **a. Daily Activities**

14 Plaintiff stated that he would be able to work if it were not for the pain in his feet. (AR  
15 40.) The ALJ considered that Plaintiff prepares his meals each day, mows the yard, drives, rides  
16 a bicycle or walks each day, uses public transportation, and goes shopping once a week, (AR 42,  
17 183, 184, 191, 192.) Plaintiff washes dishes, vacuums, and sweeps. (AR 43.) Plaintiff can walk  
18 for 45 minutes and be on his feet for about an hour before he starts to feel pain. (AR 43.)

19 The ALJ may properly consider that a claimant's daily activities are inconsistent with his  
20 complaints of disabling pain. While Plaintiff contends that he is disabled due to his foot pain, he  
21 is able to take walks, ride a bike, perform household chores, mow the lawn and go shopping.  
22 The ALJ properly considered that Plaintiff's complaints of disabling foot pain were inconsistent  
23 with his daily activities. Fair, 885 F.2d at 603.

24 **b. Medical Record**

25 The ALJ also found Plaintiff's treatment notes do not sustain the allegations of disabling  
26 pain and limitations.

27 i. Foot pain

28 At the hearing Plaintiff testified that he has told his doctors about his foot pain, but they

1 tell him his feet are alright. (AR 41.) The record only demonstrates fleeting references to foot  
2 pain. When Plaintiff was seen on July 8, 2009, the record notes there was no tingling or sensory  
3 loss in the extremities. (AR 293.) On September 23, 2009, Plaintiff reported some numbness  
4 and tingling in his feet, but no pain or other complaints. (AR 297.) On March 10, 2010, Plaintiff  
5 complained of foot pain, reporting that he was flat footed and needed orthotics. Examination of  
6 the extremities was negative. (AR 299.)

7 Plaintiff was examined by Dr. Damaina on January 21, 2011. Plaintiff complained of  
8 headaches, pain and paresthesia in the right arm and paresthesia in both feet and the left groin.  
9 (AR 311.) Plaintiff's examination revealed no abnormalities and Dr. Damaina opined that  
10 Plaintiff can sit, stand, and walk without restriction, requires no assistance with ambulation, can  
11 lift and carry 50 pounds occasionally and 20 pounds frequently with no postural or manipulative  
12 limitations. (AR 315.)

13 On April 2, 2012, chart notes indicate that Plaintiff had decreased sensation to his feet  
14 that is not clinically significant and that Plaintiff has had diabetic neuropathy since September  
15 20, 2010. (AR 354.)

16 While Plaintiff complained of disabling foot pain, the record shows that Plaintiff  
17 complained of foot pain on two occasions and examination results were negative or revealed no  
18 abnormalities. (AR 299, 315.) The most recent chart notes state that Plaintiff has decreased  
19 sensation to his feet that is not clinically significant. (AR 354.) The ALJ properly considered  
20 that the medical record did not demonstrate the severity of the pain that Plaintiff alleged caused  
21 his inability to work.

22 ii. Mental impairments

23 Dr. Swanson examined Plaintiff on February 10, 2011 and noted that Plaintiff was  
24 reluctant to provide much background information. (AR 319.) Plaintiff ambulated  
25 independently to the testing session unaccompanied and nothing atypical was observed in his  
26 gait or postural presentation. (AR 319.) Test results indicated that plaintiff can be expected to  
27 perform academically at a level considerably lower than same-aged peers, but Dr. Swanson  
28 noted that Plaintiff's effort was non-optimal and this can be seen as a low estimate of his

1 intelligence. (AR 321.) Mental and emotional functioning were opined to be within normal  
2 limits. (AR 322.)

3 The ALJ can properly consider “(1) ordinary techniques of credibility evaluation, such as  
4 the claimant's reputation for lying, prior inconsistent statements concerning the symptoms, and  
5 other testimony by the claimant that appears less than candid; (2) unexplained or inadequately  
6 explained failure to seek treatment or to follow a prescribed course of treatment; and (3) the  
7 claimant's daily activities.” Smolen v. Chater, 80 F.3d 1273, 1284 (9th Cir. 1996). The ALJ  
8 properly considered that Dr. Swanson found Plaintiff to give less than optimal effort during his  
9 testing which resulted in a low estimate of his intelligence.

10 The ALJ provided "clear and convincing reasons" for the adverse credibility finding.

11 V.

12 **CONCLUSION AND ORDER**

13 Based on the foregoing, the Court finds that the ALJ did not err in the hypothetical  
14 presented to the VE regarding Plaintiff's residual functional capacity or in finding Plaintiff's  
15 allegations of pain and limitations were not as disabling as Plaintiff claimed. Accordingly,

16 IT IS HEREBY ORDERED that Plaintiff's appeal from the decision of the  
17 Commissioner of Social Security is DENIED. It is FURTHER ORDERED that judgment be  
18 entered in favor of Defendant Commissioner of Social Security and against Plaintiff James  
19 Walker. The Clerk of the Court is directed to CLOSE this action.

20  
21 IT IS SO ORDERED.

22 Dated: December 24, 2014

  
UNITED STATES MAGISTRATE JUDGE

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