

II. FACTS

A. Procedural Background

Plaintiff was denied benefits in September 2008 following a previous workers' compensation claim. AR 17.² This denial created a presumption that Plaintiff is not disabled, to which he could rebut by showing "changed circumstances" since that determination. *See Chavez v. Bowen*, 844 F.2d 691, 693 (9th Cir. 1988).

On December 29, 2009, Plaintiff filed an application for supplemental security income alleging an inability to work beginning July 28, 1998. AR 210. Plaintiff's application was denied initially on May 3, 2010, and upon reconsideration on September 15, 2010. AR 105, 113. Subsequently, Plaintiff requested a hearing before an ALJ. AR 121. ALJ Caroline H. Beers held a hearing on February 7, 2012, and issued an order denying benefits on April 27, 2012. AR 10–25. New medical evidence in the record showed changed circumstances since Plaintiff's previous disability determination, but the ALJ determined those changes did not result in Plaintiff being disabled. The ALJ's decision became final when the Appeals Council denied Plaintiff's request for review on October 25, 2013. AR 1–6. This appeal followed.

B. Testimony

On February 7, 2012, ALJ Beers presided over a video hearing from Oakland, California. AR 33, 36. Plaintiff appeared and testified from Fresno, California, with the assistance of a Spanish interpreter. AR 35. Plaintiff was represented by attorney Melissa Proudian. *Id.*

The last grade Plaintiff completed was the ninth grade in Mexico. AR 40. Plaintiff has a driver's license, which he uses twice a week to go to the pharmacy and doctor. AR 40. His last job was picking fruit and pruning trees, and the heaviest weight lifted at that job was fifty pounds. AR 40. He stopped working on July 25, 1998, when he injured his back. AR 40.

Plaintiff primarily complains of issues with his lower back—inflammation, sensation of burning muscles, and sharp pain—that prevent him from working. AR 40–41. Plaintiff lives with his parents. AR 41. On a typical morning, Plaintiff goes walking for about forty minutes. AR 41. He primarily washes dishes as a chore during the day. AR 41. Plaintiff also goes with his parents

² References to the Administrative Record will be designated as "AR," followed by the appropriate page number.

1 to the grocery store about once a week. AR 42. On occasion, he may help get things off the shelf
2 and stand in line to pay for the items. AR 42. He does not help carry the groceries into the house.
3 AR 42. He does not attend church or any other meetings or organizations. AR 44. He has friends
4 that visit him about once a week and family that visits monthly. AR 43. Plaintiff receives food
5 stamps and does not have a source of income. AR 46. He watches television for about an hour per
6 day, but does not own a computer or know how to use one. AR 43. Plaintiff can clean himself
7 only from the waist up and sometimes asks his mother to help him from the waist down. AR 44.
8 Plaintiff obtained a back brace in 1999 and uses it all of the time. AR 42.

9 At one time, Plaintiff played soccer and went out with his friends, but he cannot do either
10 now because of his back problems. AR 45. His pain has increased since the last time he was
11 denied benefits. AR 46. Plaintiff takes Soma as an anti-inflammatory medication, which can
12 occasionally make him dizzy. AR 44. He lies down to rest or sleep for about four hours every day
13 to reduce the pain in his back. AR 45. He can concentrate for fifteen minutes before requiring a
14 three hour break. AR 46.

15 Vocational expert (“VE”), Robin Scher, summarized Plaintiff’s work history as harvest
16 worker performed at the medium level. AR 48.

17 The ALJ asked VE Scher several hypothetical questions contemplating an individual of
18 the same age, education, language, and work background as Plaintiff. In the first hypothetical,
19 the ALJ asked the VE about an individual with Plaintiff’s age, education, and work history,
20 limited to light work (can lift and carry twenty pounds occasionally and ten pounds frequently),
21 “can sit for six hours and stand and/or walk for six hours...can occasionally climb stairs and
22 crawl and cannot work on ladders or scaffolds.” AR 49. The VE determined this hypothetical
23 individual would be precluded from Plaintiff’s past work, but there are other jobs in the economy
24 that this individual could perform. AR 49. The VE provided four example light-exertion
25 occupations including: (1) apple packing header, (2) advertising materials distributor, (3) flagger
26 in the construction industry, and (4) agricultural produce sorter. AR 49–52. The VE also
27 concluded that the individual could perform sedentary work as a (1) bench assembler, (2)
28 eyeglass frame polisher, and (3) finisher. AR 53.

1 Next, the ALJ asked the VE about a second hypothetical individual who “can sit for four
2 hours, can stand and/or walk for four to six hours with normal breaks, can frequently and
3 occasionally lift ten pounds. This individual does not need an assistive device. This individual can
4 occasionally bend and stoop and crouch.” AR 53. The VE determined that, in addition to the
5 previous advertising materials distributor position, this individual could perform a number of
6 bench assembly jobs as well. AR 54.

7 In a third hypothetical question, the ALJ asked about an individual that could only sit,
8 stand, and walk one hour per day. AR 57. The VE determined this individual would be precluded
9 from all work. AR 57.

10 Finally, Plaintiff’s attorney, Melissa Proudian, asked the VE about a hypothetical
11 individual limited to light work with Plaintiff’s age, education, and work history, but the
12 individual would need one additional, unscheduled, one-hour rest break during the day. AR 57.
13 The VE determined that the individual would not be able to perform Plaintiff’s past work or any
14 other work in the economy. AR 57.

15 **C. Medical Record**

16 ***1. Treating Physician, Dinesh Sharma, M.D.***

17 Plaintiff’s only treating physician, Dr. Sharma, performed workers’ compensation
18 Progress Reports from December 2008 through March 2010, which indicated Plaintiff was in
19 need of further therapies and injections for sciatica and failed back surgery. AR 289–304, 345.

20 Dr. Sharma’s treatment notes, which are generally repetitive, begin in May 2010 and
21 continue through December 2011. AR 338–344, 349–386. Dr. Sharma noted a decrease in range
22 of motion alternating between 25% and 50%, paraspinal spasms, abnormal sensory examination,
23 abnormal motor examination, and abnormal deep tendon reflexes. AR 340–343. Dr. Sharma
24 administered injections every month, with the exception of July 2011, for Plaintiff’s sciatica,
25 which produced good results and improved Plaintiff’s functionality. AR 338–344, 349–386.

26 In December 2011, Dr. Sharma completed a physical capacities questionnaire limiting
27 Plaintiff to three hours of work per day—one hour sitting, standing, and walking, each—and
28 alternating between sitting and standing every fifteen minutes. AR 351. Dr. Sharma noted

1 Plaintiff could lift and carry twenty pounds occasionally. *Id.* There are no additional treatment
2 notes after December 2011.

3 **2. Examining Physician, Rustom Damania, M.D.**

4 Dr. Damania, one of two examining physicians, examined Plaintiff in March 2010 and
5 observed Plaintiff to have difficulty getting on and off the exam table. AR 22, 312. Plaintiff had
6 no visual, communicative, or manipulative limitations. *Id.* The diagnostic impression was
7 lumbosacral discogenic disease with a history of surgery, subjectively little improvement, and
8 hypertension. *Id.* Plaintiff “should be able to lift and carry ten pounds occasionally and ten
9 pounds frequently.” *Id.* Dr. Damania determined Plaintiff could sit for four hours, stand and walk
10 for four to six hours in a normal workday, but Plaintiff could do only occasional bending,
11 stooping and crouching. *Id.*

12 **3. Examining Physician, Fariba Vesalia, M.D.**

13 On March 14, 2012, Dr. Vesalia, a second examining physician, observed Plaintiff to have
14 no difficulty taking off or putting on his shoes, no difficulty getting on the exam table, and no
15 difficulty moving around the exam room. AR 16, 387–397. Dr. Vesali determined Plaintiff can
16 lift and carry fifty pounds occasionally and twenty pounds frequently. AR 391. Dr. Vesali also
17 found Plaintiff could sit, stand, and walk for six hours each in an eight hour workday. AR 392.
18 Plaintiff can frequently climb stairs, ramps, ladders, or scaffolds; could frequently stoop, kneel,
19 crouch, and crawl; and can continuously balance. AR 394. Plaintiff can continuously push, pull,
20 feel, finger, and handle, but only frequently reach overhead. AR 393.

21 **D. The ALJ Decision**

22 Using the Social Security Administration’s five-step sequential evaluation process, the
23 ALJ determined that Plaintiff did not meet the disability standard. AR 19–24. More particularly,
24 the ALJ found that Plaintiff had not engaged in any substantial gainful activity since December
25 29, 2009, the application date. AR 19. Further, the ALJ determined Plaintiff had the following
26 severe impairments: status-post lumbar fusion of the L5 in October 2000, with failed back
27 syndrome; degenerative disc and joint disease at the L5; sciatica; and obesity (5’4” and 212
28 pounds—BMI 36.4).” AR 19. Nonetheless, the ALJ determined that Plaintiff did not have an

1 impairment or combination of impairments that meets or medically equals the severity of one of
2 the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1. AR 19.

3 Based on her review of the entire record, the ALJ determined that Plaintiff retained the
4 residual functional capacity (“RFC”) to perform the limited range of medium work as defined in
5 20 CFR 416.967(c), because “he can carry fifty pounds occasionally and twenty-five pounds
6 frequently, and can sit, stand, and walk for six hours each, in a typical eight-hour workday.” AR
7 20. The ALJ added that Plaintiff cannot climb ladders or scaffolds, but can occasionally climb
8 ramps and stairs, and can occasionally balance, stoop, kneel, crouch, and crawl. AR 20. The ALJ
9 also found Plaintiff was unable to perform his only past relevant work as a harvest worker. AR
10 23. However, the ALJ determined that Plaintiff could perform a significant number of other jobs
11 that exist in the national economy, including advertising material distributor, flagger, apple-
12 packing header, and sorter. AR 24. As a result, the ALJ determined that Plaintiff has not been
13 disabled as defined in the Social Security Act since December 20, 2009, the date the application
14 was filed. AR 24.

15 III. DISCUSSION

16 This Court reviews the Commissioner’s final decision under the substantial evidence
17 standard; the decision will be disturbed only if it is not supported by substantial evidence or is
18 based on legal error. See 42 U.S.C. § 405(g) (“The findings of the Commissioner of Social
19 Security as to any fact, if supported by substantial evidence, shall be conclusive.”); *Smolen v.*
20 *Chater*, 80 F.3d 1273, 1279 (9th Cir. 1996). Substantial evidence means “more than a mere
21 scintilla but less than a preponderance. It is such relevant evidence as a reasonable mind might
22 accept as adequate to support a conclusion.” *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007)
23 (internal quotation marks and citations omitted). The court will affirm the ALJ’s decision if the
24 evidence is susceptible to more than one rational interpretation. *See id.*; *see also Bustamante v.*
25 *Massanari*, 262 F.3d 949, 953 (9th Cir. 2001) (“If the evidence can support either outcome, we
26 may not substitute our judgment for that of the ALJ.”). The record as a whole must be considered,
27 weighing both the “evidence that supports and the evidence that detracts from the ALJ’s
28 conclusion.” *Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir. 1985). This court reviews “only the

1 reasons provided by the ALJ in the disability determination and may not affirm the ALJ on a
2 ground upon which he did not rely,” *Orn*, 495 F.3d at 630, nor may the court “affirm simply by
3 isolating a ‘specific quantum of supporting evidence.’” *Robbins v. Soc. Sec. Admin.*, 466 F.3d
4 880, 882 (9th Cir. 2006) (citation omitted).

5 In order to qualify for benefits, a claimant must establish that he or she is unable to engage
6 in substantial gainful activity due to a medically determinable physical or mental impairment
7 which has lasted or can be expected to last for a continuous period of not less than twelve months.
8 42 U.S.C. § 1382c (a)(3)(A). A claimant must show that he or she has a physical or mental
9 impairment of such severity that he or she is not only unable to do his or her previous work, but
10 cannot, considering his or her age, education, and work experience, engage in any other kind of
11 substantial gainful work which exists in the national economy. *Quang Van Han v. Bowen*, 882
12 F.2d 1453, 1456 (9th Cir. 1989). The burden is on the claimant to establish disability. *Terry v.*
13 *Sullivan*, 903 F.2d 1273, 1275 (9th Cir. 1990).

14 Here, Plaintiff argues that the ALJ impermissibly rejected the opinion of Plaintiff’s
15 treating physician and improperly discounted Plaintiff’s own subjective testimony. The Court
16 finds that the ALJ applied the proper legal standards, and her reasons for rejecting the treating
17 physician’s opinion and Plaintiff’s subjective testimony are supported by substantial evidence in
18 the record.

19 **A. The ALJ Properly Rejected the Treating Physician’s Opinion**

20 Plaintiff contends the ALJ erred in disregarding the opinion of his treating physician, Dr.
21 Sharma. (Doc. 12 at 7–16.). The Commissioner contends, however, that the ALJ rejected Dr.
22 Sharma’s opinion for specific and legitimate reasons that are supported by substantial evidence in
23 the record. (Doc. 13 at 5.).

24 Cases in this circuit distinguish among the opinions of three types of physicians: (1) those
25 who treat the claimant (treating physicians); (2) those who examine but do not treat the claimant
26 (examining physicians); and (3) those who neither examine nor treat the claimant (nonexamining
27 physicians). *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995). “As a general rule, more weight
28 should be given to the opinion of a treating source than to the opinion of doctors who do not treat

1 the claimant.” *Id.* When the treating doctor’s opinion is not contradicted by another doctor, it may
2 be rejected only for “clear and convincing” reasons. *Baxter v. Sullivan*, 923 F.2d 1391, 1396 (9th
3 Cir. 1991). When the treating doctor’s opinion is contradicted by another doctor, the
4 Commissioner may only reject this opinion by providing “specific and legitimate reasons”
5 supported by substantial evidence in the record. *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir.
6 1983). Where the evidence is susceptible to more than one rational interpretation, however, we
7 must uphold the decision of the ALJ. *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008).
8 “Finally, the court will not reverse an ALJ’s decision for harmless error, which exists when it is
9 clear from the record that the ALJ’s error was inconsequential to the ultimate nondisability
10 determination.” *Id.* (citations and quotations omitted).

11 If a treating physician’s opinion is not given controlling weight because it is not well
12 supported or because it is inconsistent with other substantial evidence in the record, the ALJ is
13 instructed to consider the factors listed in Section 404.1527(d)(2)–(6) in determining what weight
14 to accord the opinion of the treating physician. C.F.R. § 404.1527(d)(2). Those factors include the
15 “[l]ength of the treatment relationship and the frequency of examination” by the treating
16 physician and the “nature and extent of the treatment relationship” between the patient and the
17 treating physician. 20 C.F.R. § 404.1527(d)(2)(i)–(ii). Other factors include the supportability of
18 the opinion, consistency with the record as a whole, specialization of the physician, and extent to
19 which the physician is familiar with disability programs and evidentiary requirements. 20 C.F.R.
20 § 404.1527(d)(3)–(6).

21 In reviewing the medical evidence and rejecting Dr. Sharma’s opinion, the ALJ stated the
22 following:

23 In reaching the RFC determination herein, the undersigned relies for the most part
24 on the findings of Dr. Vesali, according his opinion great probative weight because
25 it is consistent with the preponderance of the medical evidence of record as a
26 whole, including the treatment notes of Dr. Sharma. In addition, Dr. Vesali
27 examined the [Plaintiff] personally and reviewed the treating physician’s notes
28 (Exhibits B9F and B12F) prior to rendering his findings and opinion. Finally, Dr.
Vesali is a board certified specialist in physical medicine and rehabilitation.

....

I accord no weight to the opinion of Dr. Sharma because it is not consistent with
his underlying treatment notes and the findings and reported [sic] of the State

1 agency examining consultants Dr. Damania and Dr. Vesali. Dr. Sharma rendered
2 his RFC assessment on December 7, 2011, and yet his own treatment notes for the
3 months leading up to that date indicate good relief from injections, including
4 improved range of motion and more functionality in the claimant's activities of
5 daily living, contradicting his own extremely restrictive RFC assessment.

6 In addition, Dr. Vesali, who performed her examination of the claimant a mere 3
7 months later, renders an opinion which is starkly inconsistent with that of Dr.
8 Sharma. The undersigned finds the opinion of Dr. Vesali more reliable and thus
9 more credible because she had the opportunity to also review all of Dr. Sharma's
10 treatment notes.

11 AR 22–23.

12 Overall, the ALJ noted that Dr. Sharma's treating opinion was contradicted by an
13 examining physician's opinion. AR 387–397. While Dr. Sharma reported, essentially, that
14 Plaintiff could not work, examining physician, Dr. Vesali, found Plaintiff capable of a limited
15 range of medium work. AR 350, 390. Upon review, the Court finds that the ALJ presented
16 specific and legitimate reasons for rejecting the treating physician's opinion and the Court
17 addresses each reason independently.

18 ***1. Dr. Sharma's Opinion is Inconsistent With His Underlying Treatment Notes***

19 The ALJ accorded no weight to Plaintiff's treating physician, Dr. Sharma, because his
20 opinion is inconsistent with his own treatment notes. AR 22. The Court agrees with the ALJ and
21 finds this reason supported by substantial evidence.

22 From May 4, 2010, through December 6, 2011, with the exception of one month, Plaintiff
23 received monthly Neural Therapy Injections in his sciatic nerve, consisting of Dexamethasone
24 4mg and Lidocaine 1% 5cc, which were tolerated well and provided good relief lasting three to
25 four weeks. AR 338–344, 349–386. The ALJ noted that the injections provided “good relief” for
26 Plaintiff, “including improved range of motion and more functionality in [Plaintiff's] activities of
27 daily living.” AR 22. However, the day after Dr. Sharma's last treatment on December 6, 2011—
28 where Plaintiff received an injection that provided “good benefit” lasting three to four weeks—
Dr. Sharma issued his RFC assessment that limited Plaintiff to three hours of work per day, one
hour each of sitting, standing, and walking, and alternating every fifteen minutes between sitting
and standing. AR 350–351. The ALJ disagreed with Dr. Sharma's restrictive RFC and opined that

1 Dr. Sharma’s opinion was in conflict with the positive relief and increased range of motion
2 experienced from the monthly injections, as detailed in the treatment notes, and this supported her
3 decision to accord no weight to Dr. Sharma’s opinion. AR 22.

4 Plaintiff argues that the ALJ’s claim is “patently false” because the treatment notes for the
5 months leading up to the last visit showed a steady 50% reduction in range of motion. (Doc. 12 at
6 14). However, Plaintiff’s argument is misguided. While Plaintiff points to the physical
7 examination notes, the ALJ relied on the treatment notes and the overall efficacy of the sciatic
8 nerve injections. The Court agrees with the ALJ that Dr. Sharma’s restrictive RFC assessment is
9 internally inconsistent with the positive relief experienced from the monthly injections, which
10 lasted nearly until each subsequent visit. It was rational for the ALJ to infer that at the time of
11 each examination—after the effects of the prior month’s injection had worn off—Plaintiff’s range
12 of motion is limited. After an injection, however, and for the subsequent three to four weeks,
13 Plaintiff experiences an increase in that range of motion. The ALJ concluded that these benefits
14 from the monthly injections contradicted Dr. Sharma’s restrictive RFC finding. AR 22. *See*
15 *Valentine v. Comm’r Soc. Sec. Admin.*, 574 F.3d 685, 692-93 (9th Cir. 2009) (contradiction
16 between treating physician’s opinion and his treatment notes constitutes specific and legitimate
17 reason for rejecting opinion); *Houghton v. Comm’r Soc. Sec. Admin.*, 493 F. App’x 843, 845 (9th
18 Cir. 2012) (holding that ALJ’s finding that doctors’ opinions were “internally inconsistent,
19 unsupported by their own treatment records or clinical findings, [and] inconsistent with the record
20 as a whole” constituted specific and legitimate bases for discounting them).

21 The ALJ also concluded that the injections provided Plaintiff with more functionality in
22 his activities of daily living. AR 22. Plaintiff argues that since the extent of that improvement in
23 functionality is absent from the treatment notes, the ALJ cannot conclude that those activities are
24 inconsistent with Plaintiff’s RFC as determined by Dr. Sharma. (Doc. 12 at 14). However, the
25 ALJ is not required to detail every nuance but is only required to set out specific and legitimate
26 reasons supported by substantial evidence for rejecting the opinion of a treating physician. *See*
27 *Magallanes v. Bowen*, 881 F.2d 747, 751 (“The ALJ can meet this burden by setting out a
28 detailed and thorough summary of the facts and conflicting clinical evidence, stating his

1 interpretation thereof, and making findings.”). The Court agrees that this finding constitutes
2 substantial evidence for rejecting Dr. Sharma’s opinion as inconsistent with his treatment notes.

3 **2. Dr. Vesali is a Physical Medicine and Rehabilitation Specialist**

4 The ALJ’s second reason for giving more weight to Dr. Vesali’s opinion—that he is a board
5 certified specialist in physical medicine and rehabilitation—is also legitimate. In general, more
6 weight is given to the opinion of a specialist about medical issues related to his or her area of
7 specialty than to the opinion of a source who is not a specialist. 20 C.F.R. §§ 404.1527(c)(5),
8 416.927(c)(5). “Board certification is recognized as a ‘marker of a physician’s professionalism,
9 knowledge and skill’ and allows physicians to test and enhance their clinical judgment. . . .
10 Although certification is unnecessary, it is an added prestige upon which ALJs tend to rely.”
11 *Bogosian v. Astrue*, 2012 U.S. Dist. LEXIS 76068, at *8-9 (CD. Cal. May 31, 2012) (citations
12 omitted). The ALJ found that Dr. Vesali’s specialization coupled with his thorough examination
13 and review of the medical records was a sufficient reason to reject Dr. Sharma’s overly restrictive
14 RFC. The Court agrees with the ALJ that Dr. Vesali’s board certification and more thorough
15 evaluation are valid reasons for the ALJ to afford Dr. Vesali’s report the most weight.

16 **3. Dr. Sharma’s Opinion is Inconsistent With Findings and Reports of Dr. Vesali**

17 Finally, the ALJ accorded no weight to Dr. Sharma’s opinion because it conflicted with
18 the findings and reports of Dr. Vesali. AR 22. Plaintiff challenges this finding largely in two
19 respects.

20 First, Plaintiff argues that although the ALJ stated Dr. Vesali “had an opportunity to
21 review all of Dr. Sharma’s treatment notes,” the record does not support this “bold assertion.”
22 (Doc. 12 at 10.). Specifically, Plaintiff argues that Dr. Vesali’s statement that “records were
23 reviewed,” AR 387, does not sufficiently point to which records Dr. Vesali reviewed. *Id.* The
24 Court disagrees. When the ALJ ordered the comprehensive orthopedic examination after the
25 hearing, the ALJ pointed directly to which records were forwarded to Dr. Vesali—the treatment
26 notes found in Exhibits B9F and B12F. AR 16. Indeed, Dr. Vesali noted, “records were
27 reviewed.” AR 387. Therefore, the record supports with substantial evidence the assertion that Dr.
28 Vesali reviewed Dr. Sharma’s treatment notes in Exhibits B9F and B12F prior to the

1 examination.

2 Second, Plaintiff cites *Lester*, 81 F.3d at 830–831, arguing that Dr. Vesali’s examining
3 opinion alone is not a reason to reject or fail to ascribe controlling weight to the treating
4 physician’s opinion. The Court disagrees with Plaintiff’s premise that the ALJ relied solely on Dr.
5 Vesali’s opinion when rejecting Plaintiff’s treating physician’s opinion.

6 Significantly, the ALJ’s decision to rely on Dr. Vesali’s opinion is supported by
7 substantial evidence in the record. The term “substantial evidence” “describes a quality of
8 evidence ... intended to indicate that the evidence that is inconsistent with the opinion need not
9 prove by a preponderance that the opinion is wrong.” 1996 SSR LEXIS 9 at *8. Rather, “[i]t need
10 only be such relevant evidence as a reasonable mind would accept as adequate to support a
11 conclusion that is contrary to the conclusion expressed in the medical opinion.” *Id.*

12 Although Plaintiff asserts that the Court cannot consider the opinion of Dr. Vesali to be
13 substantial evidence in support of the ALJ’s decision, Plaintiff ignores that the opinion was based
14 upon an independent clinical examination of Plaintiff. Consequently, Dr. Vesali’s opinion is
15 substantial evidence in support of the ALJ’s determination. *See Orn v. Astrue*, 495 F.3d 625, 632
16 (9th Cir. 2007) (when an examining physician provides independent clinical findings, such
17 findings are substantial evidence in support of an ALJ’s ultimate decision); *Tonapetyan v. Halter*,
18 242 F.3d 1144, 1149 (9th Cir. 2001) (explaining an examining physician’s opinion is substantial
19 evidence if “it rests on his own independent examination”).

20 Moreover, both Drs. Damania and Vesali examined Plaintiff and determined Plaintiff was
21 able to at least sit, stand, and walk 4 to 6 hours, during an 8-hour workday and therefore capable
22 of performing jobs in the national economy. AR 21. This consistency also constitutes substantial
23 evidence. *See Tonapetyan*, 242 F.3d at 1149 (opinions of other physicians may be substantial
24 evidence when consistent with other independent evidence in the record).

25 The Court concludes that the ALJ properly rejected Dr. Sharma’s opinion by setting forth
26 specific and legitimate reasons supported by substantial evidence in the record.

27 **B. The ALJ Properly Discounted Plaintiff’s Subjective Symptom Testimony**

28 Plaintiff next argues that the ALJ improperly assessed his subjective symptom testimony

1 when determining the RFC. (Doc. 12 at 18.). The Commissioner contends, however, that the ALJ
2 properly considered Plaintiff's subjective symptom testimony when concluding Plaintiff is not
3 disabled. (Doc. 13 at 6.).The Court finds substantial evidence supports the ALJ's decision to
4 discount Plaintiff's subjective symptom testimony when making the RFC determination.

5 The ALJ must engage in a two-step analysis to determine the credibility of a claimant's
6 subjective pain or symptom testimony. *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir.
7 2007). First, the claimant must provide objective medical evidence of his impairment that could
8 reasonably be expected to produce some degree of the symptom or pain alleged. *Id.* Second, if the
9 claimant satisfies the first step and there is no evidence of malingering, the ALJ may reject the
10 claimant's testimony regarding the severity of his symptoms by providing specific findings and
11 stating clear and convincing reasons for doing so. *Id.* The ALJ must state which testimony is not
12 credible and what evidence in the record leads to that conclusion. *Dodrill v. Shalala*, 12 F.3d 915,
13 918 (9th Cir. 1993); *Bunnell v. Sullivan*, 947 F.2d 341, 345-46 (9th Cir. 1991); *See also* SSR 96-
14 7p (The ALJ's decision "must be sufficiently specific to make clear to the individual and to any
15 subsequent reviewers the weight the adjudicator gave to the individual's statements and reasons
16 for that weight."). Other factors the ALJ may consider include: a reputation for truthfulness, any
17 inconsistencies in testimony or conduct, daily activities, work record, and testimony from
18 physicians and third parties concerning the nature, severity, and effect of the Plaintiff's
19 symptoms. *Thomas v. Barnhart*, 278 F.3d 947, 958-59 (9th Cir. 2002).

20 Here, the ALJ found that Plaintiff satisfied the first step because Plaintiff's "medically
21 determinable impairments could reasonably be expected to cause the alleged symptoms." AR 20.
22 However, the ALJ found Plaintiff's statements concerning "the intensity, persistence and limiting
23 effects of these symptoms are not credible to the extent they are inconsistent with the above
24 residual functional capacity assessment." *Id.*

25 Because the ALJ did not find that Plaintiff was malingering, he was required to provide
26 clear and convincing reasons for rejecting Plaintiff's testimony. *Smolen*, 80 F.3d at 1283-84. As
27 explained below, the ALJ gave four clear and convincing reasons for rejecting Plaintiff's
28 subjective symptom testimony.

1 **1. Injections Provided Significant Relief**

2 First, the ALJ noted that the injections routinely provided Plaintiff with three to four
3 weeks of relief, increased the range of motion in his back, and improved Plaintiff’s functionality
4 in his daily living. AR 23. Additionally, Plaintiff was prescribed Norco, Soma, Neurontin and
5 Xanax for pain. AR 21. The ALJ properly considered the treatment Plaintiff obtained from Dr.
6 Sharma when considering his credibility. *See Tommasetti*, 533 F.3d at 1040 (affirming a district
7 court’s decision that a positive response to conservative treatment, such as physical therapy and
8 the use of anti-inflammatory medication, constituted a clear and convincing reason and
9 undermined claimant’s credibility). Furthermore, medication and its effectiveness is among the
10 many factors the ALJ will consider when evaluating credibility. *See Bunnell*, 947 F.2d at 346;
11 SSR 88-13. THE ALJ was free to credit evidence that Plaintiff’s impairments largely alleviated or
12 improved with treatment when rejecting Plaintiff’s credibility.

13 **2. Contradicting Physician Opinions**

14 The second reason that the ALJ discounted Plaintiff’s subjective testimony is both
15 examining physicians, Dr. Damania and Dr. Vesali, agreed Plaintiff could perform some level of
16 work. AR 21–22. *Johnson v. Shalala*, 60 F.3d 1428, 1434 (9th Cir. 1995) (finding inconsistencies
17 between the record and medical evidence supported a rejection of a claimant’s credibility); *see*
18 *also Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001) (“While subjective pain testimony
19 cannot be rejected on the sole ground that it is not fully corroborated by objective medical
20 evidence, the medical evidence is still a relevant factor in determining the severity of the
21 claimant’s pain and its disabling effects.”). The Court finds this reason supported by substantial
22 evidence.

23 **3. Symptomatology Waxed and Waned**

24 Third, the ALJ discounted Plaintiff’s testimony because Plaintiff’s symptomatology
25 waxed and waned. AR 22. The ALJ mentioned that the period of Plaintiff’s reduced range of
26 motion is insignificant when compared to the whole of Plaintiff’s treatment notes. AR 22.
27 Plaintiff notes that the ALJ erred by incorrectly reporting the dates of these reports. (Doc. 12 at
28 14.). The Court agrees that the ALJ reported an incorrect timeframe describing Plaintiff’s range

1 of motion.

2 The ALJ found treatment notes from September 2010 to September 2011 reflected a 25%
3 reduced range of motion. AR 21. Then, from September 2011 to November 2011, a 50% reduced
4 range of motion. *Id.* The ALJ found this fourteen-month period to be “fairly limited amount of
5 time relative to the bulk of the treatment notes.” AR 22. However, the reduced range of motion
6 here is not accurately portrayed. Plaintiff experienced a reduced range of motion from April 2010
7 through December 2011—a twenty month time period.

8 While the Court agrees with Plaintiff that the ALJ incorrectly depicted the history of range
9 of motion reports, the Court finds this error harmless. The Court will not reverse the ALJ’s
10 decision for errors that are inconsequential to the ultimate disability determination. *See Stout v.*
11 *Comm’r, Soc. Sec. Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006). Additionally, the ALJ provided
12 many other reasons for rejecting Dr. Sharma’s opinion and for discounting Plaintiff’s subjective
13 symptom testimony. *See Batson v. Comm’r, Soc. Sec. Admin.*, 359 F.3d 1190, 1197 (9th Cir.
14 2004) (holding harmless ALJ’s partial reliance on assumption record did not support where ALJ
15 gave numerous other reasons supported by the record for adverse credibility finding).

16 **4. Dismal Work History**

17 The fourth and final reason the ALJ gave for discounting Plaintiff’s testimony is
18 Plaintiff’s “dismal work history,” as pointed out by Judge Haubner, who adjudicated Plaintiff’s
19 workers’ compensation claim. AR 23. Judge Haubner noted that Plaintiff had only a single “full
20 substantial gainful activity year (1997) in his entire life” and has not worked since 1998. Plaintiff
21 argues this is not a clear and convincing reason to support an adverse credibility finding.
22 However, a poor work history is a clear and convincing reason that the ALJ may rely on to reject
23 Plaintiff’s subjective testimony. *See Thomas*, 278 F.3d at 959 (finding an extremely poor work
24 history was a clear and convincing reason that negatively affected claimant's credibility regarding
25 her inability to work).

26 Given the above, the ALJ properly discounted Plaintiff’s subjective symptom testimony
27 and provided clear and convincing reasons that are supported by substantial evidence for arriving
28 at his RFC determination. AR 20–23. The ALJ identified what testimony he found not credible

1 and what evidence undermined Plaintiff's complaints. *See Lester*, 81 F.3d at 834. If the ALJ's
2 finding is supported by substantial evidence, this Court will not engage in second-guessing.
3 *Thomas*, 278 F.3d at 959. Accordingly, the ALJ's credibility determination was made with clear
4 and convincing reasons, which were supported by substantial evidence in the record, and the sole
5 error was inconsequential to the ultimate disability determination.

6 IV. CONCLUSION

7 Based on the foregoing, the Court finds that the ALJ's decision is supported by substantial
8 evidence in the record as a whole and is based on proper legal standards. Accordingly, this Court
9 **DENIES** Plaintiff's appeal from the administrative decision of the Commissioner of Social
10 Security. The Clerk of this Court is **DIRECTED** to enter judgment in favor of Defendant Carolyn
11 W. Colvin, Acting Commissioner of Social Security and against Plaintiff, Jose Luis Calderon.

12
13 IT IS SO ORDERED.

14 Dated: August 21, 2015

/s/ Barbara A. McAuliffe
15 UNITED STATES MAGISTRATE JUDGE