

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER S. WILLIAMS,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

Defendant.

Case No. 1:14-cv-0366-BAM

**ORDER AFFIRMING AGENCY’S DENIAL
OF BENEFITS AND ORDERING
JUDGMENT FOR COMMISSIONER**

Plaintiff Christopher Williams (“Plaintiff”) seeks judicial review of the final decision of the Commissioner of Social Security (“Commissioner”) denying his application for disability insurance benefits and supplemental security income (“SSI”) under Titles II and XVI of the Social Security Act, respectively.¹ The matter is before the Court on the parties’ briefs, which were submitted without oral argument to Magistrate Judge Barbara A. McAuliffe. The Court finds the decision of the Administrative Law Judge (“ALJ”) to be supported by substantial evidence in the record as a whole and based upon proper legal standards. Accordingly, this Court affirms the agency’s determination to deny benefits.

¹ Pursuant to 28 U.S.C. § 636(c), the parties consented to conduct all further proceedings in this case before the Honorable Barbara A. McAuliffe, United States Magistrate Judge. (Docs. 7, 8).

1
2
3
4
5
6
7
8

FACTS AND PRIOR PROCEEDINGS

On March 25, 2010, Plaintiff filed his current applications for DIB and SSI beginning on September 19, 2009. AR 13, 285.² Plaintiff’s applications were denied initially and on reconsideration. AR 168-174. Subsequently, Plaintiff requested a hearing before an ALJ. AR 174. ALJ Christopher Larsen held a hearing on March 15, 2012, and issued an order denying benefits on March 26, 2012. AR 13-21. The ALJ’s decision became the final decision of the Commissioner of Social Security when the Appeals Council denied Plaintiff’s request for review on January 23, 2014. AR 1-3. This appeal followed.

9
10
11

Plaintiff’s Testimony

The ALJ held a hearing on March 15, 2012, in Fresno, California. AR 27-68. Plaintiff appeared and testified. AR 27. He was represented by attorney Melissa Proudian. AR 27.³

Plaintiff was born on January 21, 1958, and was 54 years old at the time of the hearing. AR 32. Plaintiff testified that he completed the 10th grade and although he is trained as a certified nursing assistant, his last full-time employment was in 2005 in the glass business. AR 33. He stated he also worked part-time for Wienerschnitzel from June 2008 through June 2011. AR 35. Plaintiff stated he could not work full-time any longer because of back pain and shortness of breath. AR 35. He stated he was depressed and also had problems with his right arm. AR 36.

When asked about his limitations, Plaintiff stated he can kneel down but crouching was difficult. AR 38. Plaintiff also experiences dizziness. AR 38.

When asked about his daily activities, Plaintiff stated that he cooks every day, vacuums 2 to 3 times a week, does laundry and dishes, goes grocery shopping with his girlfriend, and walks the dog for 15 to 20 minutes. AR 56. Socially, Plaintiff goes to lunch with his aunt and uncle and goes to “AA meetings.” AR 57. While Plaintiff is able to bathe and dress himself, his girlfriend occasionally helps him put on his socks. AR 54. Plaintiff also exercises daily, riding a stationary bike, using the elliptical machine, or walking on the treadmill for up to 30 minutes. AR 54.

26
27

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

28

³ Vocational Expert Cheryl Chandler also testified at the hearing; however, the VE testimony is unrelated to Plaintiff’s appeal.

1 Before hearing testimony from the VE, Plaintiff testified that he went to AA meetings and
2 had not used alcohol since 2009, except for a couple of relapses in 2009 and one on Christmas Eve
3 2011. AR 57. Plaintiff also testified that he stopped using marijuana on Thanksgiving of 2011. AR
4 60.

5 **Medical Record**

6 The entire medical record was reviewed by the Court. AR 357-763. The medical evidence
7 will be referenced below as necessary to this Court's decision.

8 **The ALJ's Decision**

9 Using the Social Security Administration's five-step sequential evaluation process, the ALJ
10 determined that Plaintiff did not meet the disability standard. AR 13-21. More particularly, the ALJ
11 found that Plaintiff had not engaged in any substantial gainful activity since September 19, 2009. AR
12 15. Further, the ALJ identified right elbow lateral epicondylitis status post-surgery, coronary artery
13 disease status post stent placement, chronic obstructive pulmonary disease, degenerative disc
14 disease, right shoulder degenerative joint disease, and paroxysmal atrial fibrillation flutter status post
15 radiofrequency ablation. AR 15. Nonetheless, the ALJ determined that the severity of Plaintiff's
16 impairments did not meet or exceed any of the listed impairments. AR 16.

17 Based on his review of the entire record, the ALJ determined that Plaintiff retained the
18 residual functional capacity ("RFC") to lift and carry 20 pounds occasionally and 10 pounds
19 frequently; stand and walk for 6 hours, and sit for 6 hours, in an eight hour-day; but must be allowed
20 to sit or stand at will throughout the work day. He can occasionally grip or grasp forcefully with the
21 right (non-dominant) hand; and can occasionally reach overhead, stoop, crouch, and crawl. He must
22 avoid concentrated exposure to fumes, dusts, odors, gases, and poor ventilation (20 CFR 404.1567
23 and 416.976(b)). AR 17. He also found that Plaintiff could perform a significant number of other
24 jobs that exist in the national economy including, cashier, counter clerk, and carrier. AR 20. As a
25 result, Plaintiff was not disabled under the Social Security Act. AR 20.

26 **SCOPE OF REVIEW**

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

1 evidence. 42 U.S.C. § 405 (g). Substantial evidence means “more than a mere scintilla,”
2 *Richardson v. Perales*, 402 U.S. 389, 402 (1971), but less than a preponderance. *Sorenson v.*
3 *Weinberger*, 514 F.2d 1112, 1119, n. 10 (9th Cir. 1975). It is “such relevant evidence as a
4 reasonable mind might accept as adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S.
5 389, 401 (1971). The record as a whole must be considered, weighing both the evidence that
6 supports and the evidence that detracts from the Commission’s conclusion. *Jones v. Heckler*, 760
7 F.2d 993, 995 (9th Cir. 1985). In weighing the evidence and making findings, the Commission must
8 apply the proper legal standards. *E.g.*, *Burkhart v. Bowen*, 856 F.2d 1335, 1338 (9th Cir. 1988).
9 This Court must uphold the Commissioner’s determination that the claimant is not disabled if the
10 Secretary applied the proper legal standards, and if the Commission’s findings are supported by
11 substantial evidence. *Sanchez v. Sec’y of Health and Human Serv.*, 812 F.2d 509, 510 (9th Cir.
12 1987); *see also Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 2002).

13 REVIEW

14 In order to qualify for benefits, a claimant must establish that he or she is unable to engage in
15 substantial gainful activity due to a medically determinable physical or mental impairment which has
16 lasted or can be expected to last for a continuous period of not less than twelve months. 42 U.S.C. §
17 1382c (a)(3)(A). A claimant must show that he or she has a physical or mental impairment of such
18 severity that he or she is not only unable to do his or her previous work, but cannot, considering his
19 or her age, education, and work experience, engage in any other kind of substantial gainful work
20 which exists in the national economy. *Quang Van Han v. Bowen*, 882 F.2d 1453, 1456 (9th Cir.
21 1989). The burden is on the claimant to establish disability. *Terry v. Sullivan*, 903 F.2d 1273, 1275
(9th Cir. 1990).

22 DISCUSSION

23 Plaintiff’s sole argument is that the ALJ failed to provide clear and convincing reasons for
24 discrediting his subjective symptom testimony. (Doc. 15 at 8). In response, the Commissioner
25 asserts that the ALJ adequately articulated appropriate reasons for discrediting Plaintiff. (Doc. 17 at
26 6). A review of the record reveals the ALJ properly assessed Plaintiff’s credibility.

1 In deciding whether to admit a claimant's subjective complaints of pain, the ALJ must engage
2 in a two-step analysis. *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1196 (9th Cir. 2004).
3 First, the claimant must produce objective medical evidence of his impairment that could reasonably
4 be expected to produce some degree of the symptom or pain alleged. *Id.* If the claimant satisfies the
5 first step and there is no evidence of malingering, the ALJ may reject the claimant's testimony
6 regarding the severity of his symptoms only if he makes specific findings and provides clear and
7 convincing reasons for doing so. *Id.* The ALJ must "state which testimony is not credible and what
8 evidence suggests the complaints are not credible." *Mersman v. Halter*, 161 F.Supp.2d 1078, 1086
9 (N.D. Cal. 2001) ("The lack of specific, clear, and convincing reasons why Plaintiff's testimony is
10 not credible renders it impossible for [the] Court to determine whether the ALJ's conclusion is
11 supported by substantial evidence."); SSR 96-7p (ALJ's decision "must be sufficiently specific to
12 make clear to the individual and to any subsequent reviewers the weight the adjudicator gave to the
13 individual's statements and reasons for that weight."). Other factors an ALJ may consider include:
14 (1) the applicant's reputation for truthfulness, prior inconsistent statements or other inconsistent
15 testimony; (2) unexplained or inadequately explained failure to seek treatment or to follow a
16 prescribed course of treatment; and (3) the applicant's daily activities. *Smolen v. Chater*, 80 F.3d
17 1273, 1282 (9th Cir. 1996).

18 Here, because there is no allegation of malingering and the ALJ found that "claimant's
19 medically determinable impairments could reasonably be expected to cause the alleged symptoms"
20 (AR 17), the ALJ's reasons must be clear and convincing. *Brown-Hunter v. Colvin*, No. 13-15213,
21 ___ F.3d ___, 2015 U.S. App. LEXIS 13560, 2015 WL 4620123, at *5 (9th Cir. Aug. 4, 2015).
22 Even if "the ALJ provided one or more invalid reasons for disbelieving a claimant's testimony," if
23 he "also provided valid reasons that were supported by the record," the ALJ's error "is harmless so
24 long as there remains substantial evidence supporting the ALJ's decision and the error 'does not
25 negate the validity of the ALJ's ultimate conclusion.'" *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th
26 Cir. 2012) (quoting *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1195-97 (9th Cir. 2004)).

27 The ALJ provided two reasons for rejecting Plaintiff's credibility: (1) a sporadic work history
28 and (2) activities of daily living. The Court finds that the ALJ's reliance on these factors are clear
and convincing reasons to reject Plaintiff's credibility.

1 First, an ALJ may properly consider a claimant's poor or nonexistent work history in making
2 a negative credibility determination. *Thomas v. Barnhart*, 278 F.3d 947, 958-59 (9th Cir. 2002)
3 ("The ALJ may consider at least the following factors when weighing the claimant's credibility:...
4 '[her] work record ...'"); see, e.g., *Aarestad v. Comm'r of Soc. Sec.*, 450 Fed. App'x. 603, 604 (9th
5 Cir. 2011) (unpublished) (affirming ALJ's determination of claimant's testimony as partially not
6 credible where claimant "worked only sporadically before the alleged onset of disability (which
7 suggests that her decision not to work was not based on disability)"); *Burkstrand v. Astrue*, 346 Fed.
8 Appx. 177, 179 (9th Cir. 2009) (unpublished) ("limited work history" negatively impacted
9 credibility).

10 Here, the ALJ found that the record demonstrated that Plaintiff has an "inconsistent work
11 history." AR 19. Indeed, the ALJ relied on the Summary Earnings Query, which reflects extremely
12 limited earnings for sporadic years from 1996 through 2011. AR 252. The record shows that
13 Plaintiff had no earnings in 1996, 2003, 2007 and 2011, only \$688.05 earnings in 2006, and from
14 \$1,197.00 to \$8,312.10 from 1997 through 2010. AR 252. The ALJ was entitled to determine from
15 Plaintiff's pre-disability period work history (or lack thereof) that he lacked motivation to work.
16 Indeed, the Ninth Circuit has expressly approved of an ALJ rejecting a claimant's credibility when
17 the claimant's "extremely poor work history" reflecting "little propensity to work in her lifetime"—
18 i.e., where a claimant's "work history was spotty, at best, with years of unemployment between jobs,
19 even before she claimed disability. *Thomas*, 278 F.3d at 959. The ALJ here was entitled to discount
20 Plaintiff's credibility based on inconsistent work history calling into question whether Plaintiff's
21 current unemployment is actually the result of his medical problems. AR 20.

22 The ALJ also properly relied upon the Plaintiff's wide ranging activities in concluding that
23 Plaintiff's daily living was inconsistent with his subjective symptom complaints. AR 20. Plaintiff
24 disputes the legal sufficiency of this reason because his daily activities were not transferable to a
25 work setting. (Doc. 15 at 14). However, the ALJ did not find that Plaintiff's daily activities were
26 transferable to a work setting. Rather, the ALJ relied on evidence of Plaintiff's daily activities to
27 demonstrate that Plaintiff's lifestyle is inconsistent with the severity of his subjective symptom
28 complaints. An ALJ may consider inconsistencies between a claimant's activities and his subjective
complaints. See *Valentine v. Astrue*, 574 F.3d 685, 693 (9th Cir. 2009) (ALJ properly determined

1 that the claimant's daily activities "did not suggest [the claimant] could return to his old job at
2 Cummins, but . . . did suggest that [the claimant's] later claims about the severity of his limitations
3 were exaggerated"). For example, Plaintiff testified that he cooked every day; vacuumed 2 to 3
4 times a week; washed dishes every day; did laundry; shopped for groceries; walked his dog; went to
5 lunch with his aunt and uncle; and attended AA meetings and gatherings to celebrate birthdays. AR
6 19, 56-57. Plaintiff further testified that he dressed and bathed himself; exercised daily; rode a
7 stationary bike; exercised on an elliptical machine; and walked on the treadmill for up to 30 minutes.
8 AR 54. See *Thomas*, 278 F.3d at 959 (claimant's "ability to perform various household chores such
9 as cooking, laundry, washing dishes and shopping," among other factors, bolstered "the ALJ's
10 negative conclusions about [her] veracity"). It was therefore proper for the ALJ to determine that
11 Plaintiff activities of daily living were inconsistent with his subjective complaints. See *Molina v.*
12 *Astrue*, 674 F.3d 1104, 1112 (9th Cir. 2012) (the ALJ may consider "whether the claimant engages
13 in daily activities inconsistent with the alleged symptoms").

14 Given the above, the ALJ provided clear and convincing reasons that are supported by
15 substantial evidence when concluding Plaintiff's subjective symptom testimony was not credible.
16 Here, the ALJ clearly identified what testimony he found not credible and what evidence
17 undermined Plaintiff's complaints. *Lester v. Chater*, 81 F.3d at 834. If the ALJ's finding is supported
18 by substantial evidence, the court "may not engage in second-guessing." *Thomas*, 278 F.3d at 959.
19 Accordingly, the ALJ's credibility findings are free of legal error.

20 CONCLUSION

21 Based on the foregoing, the Court finds that the ALJ's decision is supported by substantial
22 evidence in the record as a whole and is based on proper legal standards. Accordingly, this Court
23 **DENIES** Plaintiff's appeal from the administrative decision of the Commissioner of Social Security.
24 The Clerk of this Court is **DIRECTED** to enter judgment in favor of Defendant Carolyn W. Colvin,
25 Acting Commissioner of Social Security and against Plaintiff, Christopher S. Williams.
26 IT IS SO ORDERED.

27 Dated: September 17, 2015

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