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

PHILLIP JOHN MONTALVO,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting
Commissioner of Social Security,

Defendant.

Case No. 1:16-cv-0606-BAM

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

Plaintiff Phillip Montalvo (“Plaintiff”) challenges the Social Security Commissioner’s decision denying his application for disability benefits. Specifically, Plaintiff’s sole argument is that the Administrative Law Judge (“ALJ”) improperly discounted his credibility. (Doc. 23 at 3-12). For the reasons outlined below, the Court disagrees.

As a rule, an ALJ can reject a claimant’s subjective complaints by “expressing clear and convincing reasons for doing so.” *Benton ex rel. Benton v. Barnhart*, 331 F.3d 1030, 1040 (9th Cir. 2003). “General findings are insufficient; rather, the ALJ must identify what testimony is not credible and what evidence undermines a claimant’s complaints.” *Brown-Hunter v. Colvin*, 806 F.3d 487, 493 (9th Cir. 2015) (citation and internal quotation marks omitted).

Here, the ALJ provided several valid reasons for finding Plaintiff’s testimony “not credible.”

AR 21.

1 First, the ALJ found that ample evidence demonstrated Plaintiff's impairments were well
2 maintained on medication. AR 21. The ALJ was entitled to reject Plaintiff's credibility based on his
3 successful response to medication. *See Gerard v. Astrue*, 406 Fed. Appx. 229, 232 (9th Cir. 2010)
4 (unpublished) (ALJ properly discounted claimant's asserted severity of his anxiety and depression,
5 observing in part that claimant "was responding to psychotherapy and medication"); *Morgan v. Apfel*,
6 169 F.3d 595, 599 (9th Cir. 1999) (ALJ properly discredited the claimant's subjective complaints by
7 citing physician's report that mental symptoms improved with medication).

8 As the ALJ noted, Plaintiff received various forms of treatment, and the record revealed that
9 treatment had been relatively effective in controlling Plaintiff's symptoms. Plaintiff received one
10 injection for his left shoulder which appeared to resolve his shoulder pain. AR 739. He also reported
11 on several occasions, and at the hearing, that his mental health symptoms had significantly improved
12 with treatment with his therapy dog and taking his prescribed medications. AR 21, 41-42, 847, 855,
13 952, 1010, 1212, 1393. Successful treatment was a valid consideration.

14 Second, the ALJ found that Plaintiff's extensive daily activities—including tending to all of his
15 own personal needs, cooking, cleaning, doing dishes, driving, shopping for groceries, running errands,
16 caring for his pet and the pets of his friends, exercising daily, taking his dog for walks, using the
17 computer daily, taking public transportation, engaging in community volunteer work and frequently
18 travelling domestically and internationally to destinations including Las Vegas, Ireland, Palm Springs,
19 Denver, and taking a cruise to Mexico—were inconsistent with Plaintiff's allegations of complete
20 disability. AR 21; *see Fair v. Bowen*, 885 F.2d 597, 604 (9th Cir. 1989) (in discounting claimant
21 credibility, ALJ may properly rely on daily activities inconsistent with claim of disability, including
22 claimant's ability to care for personal needs, drive, shop, and perform routine household chores).

23 Third, the ALJ concluded that Plaintiff's termination for embezzlement shortly before his
24 period of disability undermined allegations that he was unable to work solely because of medical
25 conditions. AR 21. A Plaintiff's reason for leaving employment is a valid consideration in weighing
26 credibility. *Bruton v. Massanari*, 268 F.3d 824, 828 (9th Cir. 2001). An ALJ may discredit a
27 claimant's testimony by citing a claimant's nondisability reasons for leaving employment immediately
28 preceding the alleged onset date of disability. *See Page v. Colvin*, 620 Fed.Appx. 605, 605 (9th Cir.

1 2015). Here, the ALJ stated that because there was no evidence of a significant deterioration in
2 Plaintiff's medical condition since he was fired, it was reasonable to conclude that Plaintiff's
3 impairments would not prevent the performance of his former job, since it was being performed
4 adequately at the time of termination despite similar medical conditions. AR 21. This was a clear
5 and convincing reason to reject Plaintiff's symptom testimony.

6 Fourth, the ALJ observed that, despite Plaintiff's allegations of an inability to concentrate,
7 remember remote details, or behave appropriately in a public setting, he could process questions
8 without difficulty, respond without delay, and pay attention throughout the hearing. AR 21; *see Orn v.*
9 *Astrue*, 495 F.3d 625, 639 (9th Cir. 2007) (ALJ's "observations of a claimant's functioning" at the
10 hearing are permissible as part of the overall credibility assessment but "may not form the sole basis
11 for discrediting a person's testimony").

12 Finally, Plaintiff's allegations of severe physical and mental symptoms contradicted the
13 objective medical evidence. AR 15. An ALJ is entitled to consider whether there is a lack of medical
14 evidence to corroborate a claimant's alleged pain symptoms so long as it is not the only reason for
15 discounting a claimant's credibility. *Burch v. Barnhart*, 400 F.3d 676, 680-81 (9th Cir. 2005). The
16 ALJ noted that Plaintiff's subjective statements were in conflict with the weight of the medical
17 evidence including the opinions by Plaintiff's physicians, psychologists, and the licensed clinical
18 social worker ("LCSW"). AR 20. For example, Dr. Dinwoodie opined that Plaintiff had a left wrist
19 injury, but Plaintiff gave poor effort during attempts to test his grip strength. AR 19. While Dr.
20 Dinwoodie opined Plaintiff was precluded from heavy or forceful gripping, Plaintiff did not have any
21 whole person impairment. AR 20, 551. Reviewing physicians Dr. Surrosco and Dr. Bugg both opined
22 that Plaintiff could perform a range of light work. AR 73-74, 94-95. Additionally mental health
23 reviewing physicians Drs. Jennings and Gregg opined that Plaintiff was capable of performing simple,
24 unskilled work. AR 20-21; 74-75, 95-96. LCSW, Delia Gonzales, noted a normal mental status
25 examination and she encouraged Plaintiff to find a job and exercise more. AR 17.

26 It was proper for the ALJ to consider the inconsistency between Plaintiff's subjective symptom
27 testimony and the objective medical evidence. *See* 20 C.F.R. §§ 404.1529 (c)(1) & 2 and
28 416.929(c)(1) & (2) (2013) (requiring consideration of medical history, medical signs and laboratory

1 findings, and objective medical evidence in evaluating the extent and impact of alleged pain); *Batson*
2 *v. Comm'r of the Social Security Admin.*, 359 F.3d 1190, 1196 (9th Cir. 2004) (holding ALJ properly
3 relied on objective medical evidence and medical opinions in determining credibility); *Nyman v.*
4 *Heckler*, 779 F.2d 528, 530 (9th Cir. 1986) (discussing language of Act requiring consideration of
5 medical evidence in assessing subjective complaints).

6 Accordingly, the ALJ gave several clear and convincing reasons for finding that Plaintiff was
7 not credible.

8 Based on the foregoing, the Court finds that the ALJ's decision is supported by substantial
9 evidence in the record as a whole and is based on proper legal standards. Accordingly, this Court
10 **DENIES** Plaintiff's appeal from the administrative decision of the Commissioner of Social Security.
11 The Clerk of this Court is **DIRECTED** to enter judgment in favor of Defendant Nancy A. Berryhill,
12 Acting Commissioner of Social Security, and against Plaintiff Phillip John Montalvo.

13
14 IT IS SO ORDERED.

15 Dated: September 27, 2017

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