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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CESAR A. SANTIAGO,
Plaintiff,
v.
CAROLYN W. COLVIN, Acting
Commissioner of Social Security,
Defendant.

No. 2:13-cv-2174-EFB

ORDER

Plaintiff seeks judicial review of a final decision of the Commissioner of Social Security (“Commissioner”) denying his applications, in part, for a period of disability and Disability Insurance Benefits (“DIB”) and for Supplemental Security Income (“SSI”) under Titles II and XVI of the Social Security Act. The parties have filed cross-motions for summary judgment. For the reasons discussed below, the Commissioner’s motion is granted and plaintiff’s motion is denied.

I. BACKGROUND

Plaintiff filed applications for a period of disability, DIB, and SSI on May 28, 2010, alleging that he had been disabled since December 5, 2009. Administrative Record (“AR”) 111-120. Plaintiff’s applications were denied initially and upon reconsideration. *Id.* at 54-59, 62-68. On April 26, 2012, a hearing was held before administrative law judge (“ALJ”) Trevor Skarda.

1 *Id.* at 25-46. Plaintiff was represented by counsel at the hearings, at which he and a vocational
2 expert (“VE”) testified. *Id.*

3 On June 5, 2012, the ALJ issued a decision finding that plaintiff was not disabled prior to
4 January 22, 2012, but that he became disabled on that date under sections 216(i), 223(d), and
5 1614(a)(3)(A) of the Act.¹ *Id.* at 12-20. The ALJ made the following specific findings:

- 6 1. The claimant meets the insured status requirements of the Social Security Act
7 through December 31, 2013.
- 8 2. The claimant has not engaged in substantial gainful activity since the alleged onset
9 date (20 CFR 404.1571 *et seq.*, and 416.971 *et seq.*).

10
11 ¹ Disability Insurance Benefits are paid to disabled persons who have contributed to the
12 Social Security program, 42 U.S.C. §§ 401 *et seq.* Supplemental Security Income (“SSI”) is paid
13 to disabled persons with low income. 42 U.S.C. §§ 1382 *et seq.* Under both provisions,
14 disability is defined, in part, as an “inability to engage in any substantial gainful activity” due to
15 “a medically determinable physical or mental impairment.” 42 U.S.C. §§ 423(d)(1)(a) &
16 1382c(a)(3)(A). A five-step sequential evaluation governs eligibility for benefits. *See* 20 C.F.R.
17 §§ 423(d)(1)(a), 416.920 & 416.971-76; *Bowen v. Yuckert*, 482 U.S. 137, 140-42 (1987). The
18 following summarizes the sequential evaluation:

19 Step one: Is the claimant engaging in substantial gainful
20 activity? If so, the claimant is found not disabled. If not, proceed
21 to step two.

22 Step two: Does the claimant have a “severe” impairment?
23 If so, proceed to step three. If not, then a finding of not disabled is
24 appropriate.

25 Step three: Does the claimant’s impairment or combination
26 of impairments meet or equal an impairment listed in 20 C.F.R., Pt.
27 404, Subpt. P, App.1? If so, the claimant is automatically
28 determined disabled. If not, proceed to step four.

Step four: Is the claimant capable of performing his past
work? If so, the claimant is not disabled. If not, proceed to step
five.

Step five: Does the claimant have the residual functional
capacity to perform any other work? If so, the claimant is not
disabled. If not, the claimant is disabled.

Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir. 1995).

The claimant bears the burden of proof in the first four steps of the sequential evaluation
process. *Yuckert*, 482 U.S. at 146 n.5. The Commissioner bears the burden if the sequential
evaluation process proceeds to step five. *Id.*

1 3. Since the alleged onset date of disability, December 5, 2009, the claimant had had
2 [sic] the following severe impairments: Bronchial asthma, obstructive sleep apnea,
right leg lymphedema, and morbid obesity (20 CFR 404.1520(c) and 416.920(c)).

3 * * *

4
5 4. Since the alleged onset date of disability, December 5, 2009, the claimant has not
6 had an impairment or combination of impairments that meets or medically equals
7 the severity of one of the listed impairments in 20 CFR Part 404, Subpart P,
Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925 and
416.926).

8 * * *

9 5. After careful consideration of the entire record, the undersigned finds that prior to
10 January 22, 2012, the date the claimant became disabled, the claimant had the
11 residual functional capacity to perform light work as defined in 20 CFR
12 404.1567(b) and 416.967(b). The claimant can stand or walk 2 hours during an 8-
13 hour workday and lift or carry 20 pounds occasionally and 10 pounds frequently.
14 He can occasionally climb ramps or stairs, kneel, and crawl, frequently balance,
15 stoop, or crouch, and never climb ladders, ropes, or scaffolds. The claimant
16 should avoid moderate exposure to pulmonary irritants such as fumes, odors,
17 dusts, gases, and poor ventilated areas, and all exposure to dangerous operational
18 control of moving machinery and unprotected heights.

15 * * *

16
17 6. After careful consideration of the entire record, the undersigned finds that
18 beginning on January 22, 2012, the claimant has the residual functional capacity to
19 perform light work as defined in 20 CFR 404.1567(b) and 416.967(b). The
20 claimant can stand or walk 2 hours during an 8-hour workday and lift or carry 20
21 pounds occasionally and 10 pounds frequently. He can occasionally climb ramps
22 or stairs, kneel, and crawl, frequently balance, stoop, or crouch, and never climb
23 ladders, ropes, or scaffolds. The claimant should avoid moderate exposure to
24 pulmonary irritants such as fumes, odors, dusts, gases, and poor ventilated areas,
25 and all exposure to dangerous operational control of moving machinery and
26 unprotected heights. He must elevate one leg, more than 20% of the workday, at
27 or above chest level. The claimant would miss work more than one time per
28 month on an ongoing basis and requires two additional breaks 15 minutes or
greater each day. He is unable to sustain work activity on a regular basis for 8
hours a day 40 hours a week

25 * * *

26
27 7. Since December 5, 2009, the claimant has been unable to perform any past
28 relevant work (20 CFR 404.1565 and 416.965).

* * *

1 8. Prior to the established disability onset date, the claimant was a younger individual
2 age 18-49. The claimant's age category has not changed since the established
3 disability onset date (20 CFR 404.1563 and 416.963).

4 9. The claimant has a limited education and is able to communicate in English (20
5 CFR 404.1564 and 416.964).

6 10. Prior to January 22, 2012, transferability of job skills is not material to the
7 determination of disability because using the Medical-Vocational Rules as a
8 framework supports a finding that the claimant is "not disabled" whether or not the
9 claimant has transferable job skills. Beginning on January 22, 2012, the claimant
10 has not been able to transfer job skills to other occupations (See SSR 82-41 and 20
11 CFR Part 404, Subpart P, Appendix 2).

12 11. Prior to January 22, 2012, considering the claimant's age, education, work
13 experience, and residual functional capacity, there were jobs that existed in
14 significant numbers in the national economy that the claimant could have
15 performed (20 CFR 404.1569, 404.1569a, 416.969, and 416.969a).

16 * * *

17 12. Beginning on January 22, 2012, considering the claimant's age, education, work
18 experience, and residual functional capacity, there are no jobs that exist in
19 significant numbers in the national economy that the claimant can perform (20
20 CFR 404.1560(c), 404.1566, 416.960(c), and 416.966).

21 * * *

22 13. The claimant was not disabled prior to January 22, 2012, but became disabled on
23 that date and has continued to be disabled through the date of this decision (20
24 CFR 404.1520(g) and 416.920(g)).

25 *Id.* at 14-20.

26 Plaintiff's request for Appeals Council review was denied on August 21, 2013, leaving the
27 ALJ's decision as the final decision of the Commissioner. *Id.* at 1-6.

28 II. LEGAL STANDARDS

The Commissioner's decision that a claimant is not disabled will be upheld if the findings
of fact are supported by substantial evidence in the record and the proper legal standards were
applied. *Schneider v. Comm'r of the Soc. Sec. Admin.*, 223 F.3d 968, 973 (9th Cir. 2000);
Morgan v. Comm'r of the Soc. Sec. Admin., 169 F.3d 595, 599 (9th Cir. 1999); *Tackett v. Apfel*,
180 F.3d 1094, 1097 (9th Cir. 1999).

1 The findings of the Commissioner as to any fact, if supported by substantial evidence, are
2 conclusive. *See Miller v. Heckler*, 770 F.2d 845, 847 (9th Cir. 1985). Substantial evidence is
3 more than a mere scintilla, but less than a preponderance. *Saelee v. Chater*, 94 F.3d 520, 521 (9th
4 Cir. 1996). “It means such evidence as a reasonable mind might accept as adequate to support a
5 conclusion.” *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (quoting *Consol. Edison Co. v.*
6 *N.L.R.B.*, 305 U.S. 197, 229 (1938)).

7 “The ALJ is responsible for determining credibility, resolving conflicts in medical
8 testimony, and resolving ambiguities.” *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir.
9 2001) (citations omitted). “Where the evidence is susceptible to more than one rational
10 interpretation, one of which supports the ALJ’s decision, the ALJ’s conclusion must be upheld.”
11 *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002).

12 III. ANALYSIS

13 Plaintiff challenges the ALJ’s finding that he was not disabled prior to January 22, 2012,
14 arguing that the ALJ erred in failing to: (1) consider evidence from his treating physicians; (2)
15 properly evaluate the impact of his obesity on his ability to work; and (3) give legally sufficient
16 reasons for rejecting plaintiff’s statements regarding the nature and severity of his pre-January
17 2012 impairments. ECF No. 17 at 11-20.

18 A. The ALJ Properly Considered the Medical Evidence of Record

19 Plaintiff argues that the ALJ failed to properly consider his pre-January 2012 medical
20 records, including a statement from plaintiff’s treating physician. ECF No. 17 at 11-14.

21 The weight given to medical opinions depends in part on whether they are proffered by
22 treating, examining, or non-examining professionals. *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir.
23 1996). Ordinarily, more weight is given to the opinion of a treating professional, who has a
24 greater opportunity to know and observe the patient as an individual. *Id.*; *Smolen v. Chater*, 80
25 F.3d 1273, 1295 (9th Cir. 1996). To evaluate whether an ALJ properly rejected a medical
26 opinion, in addition to considering its source, the court considers whether (1) contradictory
27 opinions are in the record; and (2) clinical findings support the opinions. An ALJ may reject an
28 uncontradicted opinion of a treating or examining medical professional only for “clear and

1 convincing” reasons. *Lester*, 81 F.3d at 831. In contrast, a contradicted opinion of a treating or
2 examining professional may be rejected for “specific and legitimate” reasons that are supported
3 by substantial evidence. *Id.* at 830. While a treating professional’s opinion generally is accorded
4 superior weight, if it is contradicted by a supported examining professional’s opinion (*e.g.*,
5 supported by different independent clinical findings), the ALJ may resolve the conflict. *Andrews*
6 *v. Shalala*, 53 F.3d 1035, 1041 (9th Cir. 1995) (citing *Magallanes v. Bowen*, 881 F.2d 747, 751
7 (9th Cir. 1989)). However, “[w]hen an examining physician relies on the same clinical findings
8 as a treating physician, but differs only in his or her conclusions, the conclusions of the
9 examining physician are not ‘substantial evidence.’” *Orn v. Astrue*, 495 F.3d 625, 632 (9th Cir.
10 2007).

11 Plaintiff first contends that the ALJ impermissibly rejected without explanation a
12 statement from his treating physician, Dr. Diego F. Ferro, M.D. ECF No. 17 at 12. The letter
13 written by Dr. Ferro, which is dated December 29, 2010, includes the following statement:

14 Mr. Cesar Santiago is a patient that I have been taking care of since
15 11/03/2010. He has chronic Lymphedema of the right lower
16 extremity with multiple exacerbations in the past year; requiring
17 multiple treatments for superimposed bacterial infections. This
condition affects his daily activities and gain pattern. He requires
specialized care/management for this particular condition as he has
failed conventional medical and pharmacological therapy.

18 AR 320.

19 Conspicuously missing from the statement is an opinion addressing the severity of
20 plaintiff’s impairments. *See* 20 C.F.R. § 404.1527(a)(2) (“Medical opinions are statements from
21 physicians and psychologists or other acceptable medical sources that reflect judgments about the
22 nature and severity of your impairment(s), including your symptoms, diagnosis and prognosis,
23 what you can still do despite impairment(s), and your physical or mental restriction.”), 20 C.F.R.
24 § 416.927(a)(2) (same). The statement provides a diagnosis, but does not identify specific
25 restrictions or indicate what activities plaintiff can still perform despite his medical condition. As
26 the statement does not constitute an opinion regarding plaintiff’s functional limitations, there was
27 simply no opinion to reject. Thus, the ALJ did not err in this regard.

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1 Plaintiff next contends that the ALJ failed to properly consider numerous pre-January
2 2012 records which documented the severity of plaintiff's impairments. ECF No. 17 at 11-14.
3 The records cited by plaintiff document that plaintiff experienced swelling, pain, and the need to
4 elevate his legs. *See, e.g.*, AR 205, 206, 217, 219, 228, 229, 241. The ALJ did not specifically
5 discuss each piece of evidence identified by the plaintiff but he had no obligation to do so. An
6 ALJ need not discuss every piece of evidence in the record, so long as his decision is supported
7 by substantial evidence. *See Howard v. Barnhart*, 341 F.3d 1006, 2012 (9th Cir. 2003). Here,
8 every physician that provided an opinion regarding plaintiff's functional limitations found that
9 plaintiff retained the ability to perform the RFC assessed by the ALJ, and the ALJ relied on this
10 opinion evidence in assessing plaintiff's RFC. There was substantial evidence to support that
11 RFC assessment.

12 On September 18, 2010, plaintiff was examined by Dr. Satish Sharma. AR 286-291. Dr.
13 Sharma diagnosed plaintiff with bronchial asthma, sleep apnea syndrome, venous insufficiency in
14 right lower extremity, and morbid obesity. *Id.* at 290. It was his opinion that plaintiff could lift
15 20 pounds occasionally and 10 pounds frequently, and stand and walk for 4 hours per day with
16 normal breaks. *Id.* He further opined that plaintiff had no manipulative impairments, and no
17 limitations in speech, hearing, or vision. *Id.*

18 In September 2011, plaintiff underwent a comprehensive internal medicine evaluation,
19 which was performed by Dr. Jonathan Schwartz. *Id.* at 325-328. Dr. Schwartz diagnosed
20 plaintiff with lymphedema, shortness of breath, likely secondary to asthma, emphysema, and
21 morbid obesity. *Id.* at 328. Based on the examination, Dr. Schwartz opined that plaintiff could
22 stand and walk up to four hours, sit up to six hours, had no limitations in lifting or carrying, and
23 no manipulative or environmental limitations. *Id.*

24 The record also contains a physical RFC assessment completed by Dr. N.J. Rubaum on
25 September 29, 2010. *Id.* at 294-299. Based on a review of the medical records, Dr. Rubaum
26 opined that plaintiff could lift 20 pounds occasionally and 10 pounds frequently; stand and/or sit
27 at least 2 hours in an 8-hour workday; sit about 6 hours in an 8-hour workday; occasionally climb
28 ramps and stairs but never ladders, ropes, or scaffolds; occasionally crouch and crawl; and

1 frequently stoop and kneel. *Id.* at 295-297. Dr. Rubaum also opined that plaintiff had no
2 manipulative or communicative limitations, but he should avoid even moderate exposure to
3 fumes, odors, dusts, and gases, as well as exposure to hazards (machinery, heights, etc.). *Id.* at
4 297-298.

5 The ALJ considered each of these opinions in assessing plaintiff's RFC. The ALJ
6 ultimately found that plaintiff was more limited than the opinions given by Drs. Sharma and
7 Schwartz, and therefore gave their opinions reduced weight. The ALJ, however, gave great
8 weight to the opinion of Dr. Rubaum because it was supported by the evidence of record, a
9 finding that plaintiff does not specifically dispute. Since Dr. Rubaum's opinion constitutes
10 substantial evidence, the ALJ did not err in assessing plaintiff's RFC. *Thomas v. Barnhart*, 278
11 F.3d 947, 957 (9th Cir. 2002) ("The opinions of non-treating or non-examining physicians may
12 also serve as substantial evidence when the opinions are consistent with independent clinical
13 findings or other evidence in the record.").

14 B. The ALJ Adequately Considered Plaintiff's Obesity

15 Plaintiff argues that the ALJ failed to properly evaluate the impact his obesity had on his
16 ability to perform work related functions in a sustained manner as required by Social Security
17 Ruling ("SSR") 02-1p. ECF No. 17 at 14-16.

18 SSR 02-1p describes obesity as "a complex, chronic disease characterized by excessive
19 accumulation of body fat." Obesity "commonly leads to, and often complicates, chronic diseases
20 of the cardiovascular, respiratory, and musculoskeletal body systems." *Id.* "The combined
21 effects of obesity with other impairments may be greater than might be expected without
22 obesity." *Id.* In assessing a claimant's RFC, the ALJ "must consider an individual's maximum
23 remaining ability to do sustained work activities in an ordinary work setting on a regular and
24 continuing basis." *Id.* "As with other impairments, the ALJ should explain how he determined
25 whether obesity caused any physical or mental impairments." *Burch v. Barnhart*, 400 F.3d 676,
26 683 (9th Cir. 2005) (citing SSR 01-02p).

27 The record demonstrates that the ALJ considered plaintiff's obesity in assessing his RFC.

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1 The ALJ noted that plaintiff weighs 400 pounds and stands 5'8'' tall, and also concluded that his
2 morbid obesity was a severe impairment. AR 14, 16. Furthermore, in determining plaintiff's
3 RFC the ALJ relied on Dr. Rumbaum's opinion, who accounted for plaintiff's morbid obesity in
4 formulating his opinion. *See id.* at 295 (Dr. Rumbaum's opinion, in which he notes that plaintiff
5 is 5'6'' in height and weighs 405 pounds and morbidly obese). Thus, the ALJ properly
6 considered plaintiff's morbid obesity. *See Burch*, 400 F.3d at 684; *Garcia v. Comm'r Soc. Sec.*
7 *Admin.*, 498 F. App'x 710, 712 (9th Cir. 2012) (ALJ consider obesity where he found the
8 plaintiff's obesity severe and relied on opinion of a physician who recognized it).

9 C. The ALJ Properly Discounted Plaintiff's Subjective Complaints

10 Plaintiff further contends that the ALJ erred by failing to provide clear and convincing
11 reasons for discounting his subjective complaints. ECF No. 17 at 17-20.

12 In evaluating the credibility of subjective complaints, the ALJ should first consider
13 objective medical evidence and then consider other factors. *Bunnell v. Sullivan*, 947 F.2d 341,
14 344 (9th Cir. 1991) (en banc). If there is objective medical evidence of impairment, the ALJ may
15 then consider the nature of the symptoms alleged, including aggravating factors, medication,
16 treatment and functional restrictions. *See id.* at 345-347. The ALJ also may consider: (1) the
17 applicant's reputation for truthfulness, prior inconsistent statements or other inconsistent
18 testimony, (2) unexplained or inadequately explained failure to seek treatment or to follow a
19 prescribed course of treatment, and (3) the applicant's daily activities. *Smolen*, 80 F.3d at 1284.
20 Work records, physician and third party testimony about nature, severity and effect of symptoms,
21 and inconsistencies between testimony and conduct also may be relevant. *Light v. Soc. Sec.*
22 *Admin.*, 119 F.3d 789, 792 (9th Cir. 1997). A failure to seek treatment for an allegedly
23 debilitating medical problem may be a valid consideration by the ALJ in determining whether the
24 alleged associated pain is not a significant nonexertional impairment. *See Flaten v. Secretary of*
25 *HHS*, 44 F.3d 1453, 1464 (9th Cir. 1995). The ALJ may rely, in part, on his or her own
26 observations, *see Quang Van Han v. Bowen*, 882 F.2d 1453, 1458 (9th Cir. 1989), which cannot
27 substitute for medical diagnosis. *Marcia v. Sullivan*, 900 F.2d 172, 177 n.6 (9th Cir. 1990).

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1 “Without affirmative evidence showing that the claimant is malingering, the Commissioner’s
2 reasons for rejecting the claimant’s testimony must be clear and convincing.” *Morgan*, 169 F.3d
3 at 599.

4 Plaintiff testified that he experiences swelling in his right leg that causes severe pain. AR
5 30-31. He claimed that he must keep his leg elevated “most of the time” throughout the day, and
6 that if he sits in the same position for 20 minutes his leg will fall asleep and he will be unable to
7 walk. *Id.* at 32-34. He testified that he cannot exercise because he needs to stay off his feet. *Id.*
8 at 38. He also stated that he was unable to “do anything with the family nowadays,” including
9 taking his kids to the park. *Id.* at 41. He stated that because of the swelling he cannot wear jeans,
10 and that he is too embarrassed to go in public in shorts, so he “doesn’t go outside period.” *Id.* at
11 41.

12 The ALJ found that although the record supports some limitations and restrictions,
13 plaintiff’s statements concerning the intensity, persistence and limiting effects of his impairments
14 were not supported by plaintiff’s activities of daily living. AR 17. As observed by the ALJ,
15 plaintiff reported in an exertion questionnaire that he can walk a half mile, take a 15 minute
16 break, and then walk another half mile. *Id.* at 148. He reported being able to carry groceries from
17 his front door to his kitchen, drive a car for about a half hour before his leg goes numb, and
18 perform some yard work, including mowing his lawn for 15 minutes before needing a break. *Id.*
19 at 150.

20 Plaintiff contends that the activities he reported in the exertion questionnaire show that his
21 activities are extremely limited, and do not evidence that he is able to work. ECF No. 17 at 19.
22 Although the daily activities described in the exertional questionnaire were limited, the court
23 nevertheless finds that the ALJ properly found that plaintiff’s reported activities did not support
24 his allegations concerning the intensity, persistence, and limiting effects of his impairments. As
25 noted above, plaintiff testified that he must continuously elevate his leg, can do no exercise
26 because he must stay off his fee, is unable to do any activities with his family, and that he
27 “doesn’t go outside period.” AR 32-34, 38, 41. These allegations are inconsistent with plaintiff’s
28 reported activities, which included the ability to walk a full mile with a 15 minute break in the

1 middle, drive a car, and perform some yard work. *Id.* at 148-150. The ALJ permissibly relied on
2 this inconsistency in finding that plaintiff was not as limited as he alleged. *See Molina v. Astrue*,
3 674 F.3d 1104, 1113 (9th Cir. 2012) (“Even where those activities suggest some difficulty
4 functioning, they may be grounds for discrediting the claimant’s testimony to the extent that they
5 contradict claims of a totally debilitating impairment.”).

6 IV. CONCLUSION

7 The ALJ applied the proper legal standard and supported his decision with substantial
8 evidence. Accordingly, it is hereby ORDERED that:

- 9 1. Plaintiff’s motion for summary judgment is denied;
- 10 2. The Commissioner’s cross-motion for summary judgment is granted; and
- 11 3. The Clerk is directed to enter judgment in the Commissioner’s favor.

12 DATED: March 30, 2015.

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14 EDMUND F. BRENNAN
15 UNITED STATES MAGISTRATE JUDGE
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