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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSEPH J. SALLES,

No. 2:15-cv-2428-CMK

Plaintiff,

vs.

MEMORANDUM OPINION AND ORDER

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

_____ /

Plaintiff, who is proceeding with retained counsel, brings this action for judicial review of a final decision of the Commissioner of Social Security under 42 U.S.C. § 405(g). Pursuant to the written consent of all parties, this case is before the undersigned as the presiding judge for all purposes, including entry of final judgment. See 28 U.S.C. § 636(c). Pending before the court are plaintiff’s motion for summary judgment (Doc. 18) and defendant’s cross-motion for summary judgment (Doc. 19). For the reasons discussed below, the court will deny plaintiff’s motion for summary judgment or remand and grant the Commissioner’s cross-motion for summary judgment.

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1 **I. PROCEDURAL HISTORY¹**

2 Plaintiff applied for social security benefits with a protective filing date of July
3 16, 2012, alleging an amended onset of disability on November 22, 2006, due to ruptured
4 appendix, stomach surgery, back injury, neck, manic depressive (Certified administrative record
5 (“CAR”) 61, 72, 73, 83, 146-50). Plaintiff’s claim was denied initially and upon reconsideration.
6 Plaintiff requested an administrative hearing, which was held on June 9, 2014, before
7 Administrative Law Judge (“ALJ”) Daniel G. Heely. In a July 25, 2014, decision, the ALJ
8 concluded that plaintiff is not disabled² based on the following findings:

9 _____
10 ¹ Because the parties are familiar with the factual background of this case, including
11 plaintiff’s medical history, the undersigned does not exhaustively relate those facts here. The
12 facts related to plaintiff’s impairments and medical history will be addressed insofar as they are
13 relevant to the issues presented by the parties’ respective motions.

14 ² Disability Insurance Benefits are paid to disabled persons who have contributed to
15 the Social Security program, 42 U.S.C. § 401 *et seq.* Supplemental Security Income (“SSI”) is
16 paid to disabled persons with low income. 42 U.S.C. § 1382 *et seq.* Under both provisions,
17 disability is defined, in part, as an “inability to engage in any substantial gainful activity” due to
18 “a medically determinable physical or mental impairment.” 42 U.S.C. §§ 423(d)(1)(a) &
19 1382c(a)(3)(A). A five-step sequential evaluation governs eligibility for benefits. See 20 C.F.R.
20 §§ 423(d)(1)(a), 416.920 & 416.971-76; Bowen v. Yuckert, 482 U.S. 137, 140-42 (1987). The
21 following summarizes the sequential evaluation:

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

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

Step three: Does the claimant’s impairment or combination
of impairments meet or equal an impairment listed in 20 C.F.R., Pt.
404, Subpt. P, App.1? If so, the claimant is automatically
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).

- 1 1. The claimant has not engaged in substantial gainful activity since
2 July 16, 2012, the application date (20 CFR 416.971 *et seq*).
- 3 2. The claimant has the following severe impairments: back/neck
4 impairment, depression, asthma, and obesity (20 CFR 416.920(c)).
- 5 3. The claimant does not have an impairment or combination of
6 impairments that meets or medically equals one of the listed
7 impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR
8 416.920(d), 416.925 and 416.926).
- 9 4. After careful consideration of the entire record, the undersigned
10 finds that the claimant has the residual functional capacity to
11 perform light work as defined in 20 CFR 416.967(b) with the
12 following additional limitations: could sit six hours, stand/walk 6
13 hours each with normal breaks; lift and/or carry 20 pounds
14 occasionally, 10 pounds frequently; could never climb ladders,
15 ropes or scaffolds; could occasionally climb ramps or stairs; could
16 never work around hazards like moving dangerous machinery or
17 unprotected heights; could not operate motor vehicles; could not
18 work around concentrated fumes, odors, smoke, dusts, other
19 environmental irritants in the workplace; and is limited to unskilled
20 work.
- 21 5. The claimant is unable to perform any past relevant work (20 CFR
22 416.965).
- 23 6. The claimant was born on October 3, 1965 and was 46 years old,
24 which is defined as a younger individual age 18-49, on the date the
25 application was filed (20 CFR 416.964).
- 26 7. The claimant has at least a high school education and is able to
communicate in English (20 CFR 416.964).
9. Transferability of job skills is not material to the determination of
disability because using the Medical-Vocational Rules as a
framework supports a finding that the claimant is “not disabled,”
whether or not the claimant has transferable job skills (See SSR
82-41 and 20 CFR Part 404, Subpart P, Appendix 2).
9. Considering the claimant’s age, education, work experience, and
residual functional capacity, there are jobs that exist in significant
numbers in the national economy that the claimant can perform (20
CFR 416.969 and 416.969(a)).

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

1 not credible.

2 **A. Medical Opinions**

3 Plaintiff claims the ALJ erred in rejecting his treating physician’s opinion. He
4 contends the ALJ failed to cite to any legitimate evidentiary basis to support his rejection of Dr.
5 Shen, and simply substituted his own lay opinion for that of the medical professional.

6 Defendant counters that the ALJ properly evaluated Dr. Shen’s opinion, provided valid and
7 legally supported reasons for giving minimal weight to most of Dr. Shen’s opinion, and was not
8 bound to accept unsupported limitations.

9 The weight given to medical opinions depends in part on whether they are
10 proffered by treating, examining, or non-examining professionals. See Lester v. Chater, 81 F.3d
11 821, 830-31 (9th Cir. 1995). Ordinarily, more weight is given to the opinion of a treating
12 professional, who has a greater opportunity to know and observe the patient as an individual,
13 than the opinion of a non-treating professional. See id.; Smolen v. Chater, 80 F.3d 1273, 1285
14 (9th Cir. 1996); Winans v. Bowen, 853 F.2d 643, 647 (9th Cir. 1987). The least weight is given
15 to the opinion of a non-examining professional. See Pitzer v. Sullivan, 908 F.2d 502, 506 & n.4
16 (9th Cir. 1990).

17 In addition to considering its source, to evaluate whether the Commissioner
18 properly rejected a medical opinion the court considers whether: (1) contradictory opinions are
19 in the record; and (2) clinical findings support the opinions. The Commissioner may reject an
20 uncontradicted opinion of a treating or examining medical professional only for “clear and
21 convincing” reasons supported by substantial evidence in the record. See Lester, 81 F.3d at 831.
22 While a treating professional’s opinion generally is accorded superior weight, if it is contradicted
23 by an examining professional’s opinion which is supported by different independent clinical
24 findings, the Commissioner may resolve the conflict. See Andrews v. Shalala, 53 F.3d 1035,
25 1041 (9th Cir. 1995). A contradicted opinion of a treating or examining professional may be
26 rejected only for “specific and legitimate” reasons supported by substantial evidence. See Lester,

1 81 F.3d at 830. This test is met if the Commissioner sets out a detailed and thorough summary of
2 the facts and conflicting clinical evidence, states her interpretation of the evidence, and makes a
3 finding. See Magallanes v. Bowen, 881 F.2d 747, 751-55 (9th Cir. 1989). Absent specific and
4 legitimate reasons, the Commissioner must defer to the opinion of a treating or examining
5 professional. See Lester, 81 F.3d at 830-31. The opinion of a non-examining professional,
6 without other evidence, is insufficient to reject the opinion of a treating or examining
7 professional. See id. at 831. In any event, the Commissioner need not give weight to any
8 conclusory opinion supported by minimal clinical findings. See Meanel v. Apfel, 172 F.3d 1111,
9 1113 (9th Cir. 1999) (rejecting treating physician's conclusory, minimally supported opinion);
10 see also Magallanes, 881 F.2d at 751.

11 As to Dr. Shen's opinion, the ALJ stated:

12 On May 20, 2014, I-Hsuan Shen, D.O., completed a medical
13 source statement (Exhibit 12F). Dr. Shen is the claimant's primary
14 treating physician. Dr. Shen was of the opinion that the claimant
15 could sit, stand and walk for thirty minutes at a time, and no more
16 than two hours each in an eight-hour workday. Dr. Shen opined
17 that the claimant needed a cane to ambulate and that it was
18 medically necessary. Nonetheless, when the claimant was not
19 using a cane he could carry small objects freely. Dr. Shen stated
20 that the claimant's degenerative disc disease of the spine, chronic
21 low back pain and chronic abdominal pain supported the
22 claimant's limitations assessment. Dr. Shen did not find any
23 significant manipulative limitations and found that the claimant
24 could perform occasional bilateral foot controls. Dr. Shen was of
25 the opinion that the claimant could never climb stairs and ramps,
26 nor climb ladders or scaffolds, and never stoop or crawl. The
claimant could occasionally balance, kneel and crouch.

21 Additionally, Dr. Shen opined that the claimant's asthma restricted
22 his work abilities in that he could never work at unprotected
23 heights, could never work around dust, odors, fumes and
24 pulmonary irritants, and could never work in extreme cold or
25 extreme heat. Dr. Shen believed the claimant could occasionally
26 move mechanical parts, operate motor vehicles, work in humidity
and wetness, and around vibrations. The claimant's asthma also led
to the claimant's limitation of only being able to be around
moderate levels of noise (Exhibit 12F/6). Dr. Shen was also of the
opinion that due to the claimant's physical impairments, he could
not shop or travel without a companion for assistance (Exhibit
12F/7). Dr. Shen stated that the claimant's physical impairments

1 did not limit his ability to walk a block at a reasonable pace or
2 rough or uneven surfaces, ability to use standard public
3 transportation, ability to climb a few steps with the use of a
4 handrail, ability to prepare a simple meal and feed himself, ability
5 to care for personal hygiene and his ability to sort, handle or use
6 paper files (Exhibit 12F/7). Lastly, Dr. Shen opined that the
7 claimant's above limitations would last more than 12 consecutive
8 months (Exhibit 12F).

9 Some weight is given to Dr. Shen's opinion in regards to the
10 limitations that the claimant's asthma causes as well as the
11 limitation that the claimant could occasionally lift/carry up to 20
12 pounds. Yet, the majority of Dr. Shen's opinion is rendered less
13 persuasive due to the inconsistencies between his treatment reports
14 and his medical source statement. For example, Dr. Shen stated
15 that the claimant could not ambulate without a cane; however,
16 treatment notes indicate that the claimant had a normal gait
17 (Exhibit 2F/32). Moreover, other medical evidence of record also
18 found that the claimant could ambulate effectively (Exhibit 3F/3).
19 Dr. Shen's opinion that the claimant could not shop or travel
20 without a companion is seemingly based on the claimant's
21 subjective complaints because the claimant stated in earlier
22 disability documents that he could go out on his own (Exhibit
23 5E/4). For these reasons, Dr. Shen's opinion is given minimal
24 weight.

25 (CAR 19-20).

26 There are medical treatment notes in the record from Dr. Shen covering the period
of July 2011 through March 2013, and April 2014. Throughout the record, Dr. Shen treated³
plaintiff's back and neck pain with various pain medication. With few exceptions, Dr. Shen
noted that plaintiff had no gross motor deficits and his muscle strength was 5/5 for the upper and
lower extremity. On only two occasions, April 26, 2012 and May 1, 2012, Dr. Shen noted that
plaintiff was unable to sit or stand in one position for longer periods of time, and was frequently
changing positions. (CAR 259, 263). In fact, on May 1, 2012, Dr. Shen noted that plaintiff
walked with a normal gait; no limitation was noted in the record and no mention of needing to
adulate with the assistance of a cane. (CAR 259). In addition, both before and after those two

³ As the ALJ rejected Dr. Shen's opinion as to plaintiff's limitations relating to his
back and neck, but not the asthma, this opinion only forces on the treatment plaintiff received for
his back and neck.

1 visits, it is noted several times that plaintiff's low back pain was stable, and that the pain
2 medication was sufficient to manage his pain. (CAR 297, 387, 396). There were also several
3 visits wherein plaintiff was seen for an acute care issues unrelated to his back, and no mention of
4 his pain was made.

5 As noted above, the ALJ set forth in his opinion the limitations Dr. Shen opined.
6 The ALJ then determined many of those limitations were not supported by the treatment notes.
7 The undersigned agrees. While plaintiff was treated by Dr. Shen for pain, and Dr. Shen
8 prescribed different pain medication over the years, the medical notes reflect that the medication
9 was fairly effective in controlling plaintiff's pain. There is no notation in Dr. Shen's notes that a
10 cane was ever prescribed, medically necessary, or used by plaintiff. Instead, Dr. Shen noted that,
11 with just two exceptions, plaintiff had no gross motor deficits and noted plaintiff's gait was
12 normal on at least one occasion. The two occasions where it was otherwise noted, plaintiff had a
13 difficult time staying in one position for longer periods of time, not that he was having difficulty
14 ambulating. In addition, as the ALJ noted, other observations of plaintiff indicate that he did not
15 have trouble ambulating other than having a relatively slow gait. Thus, the significant limitations
16 Dr. Shen opined are simply not supported by her own treatment records. Similarly, the ALJ
17 noted the inconsistency between plaintiff's own statements, such as his ability to go shopping,
18 and Dr. Shen's opinion that plaintiff was able to go out on his own.

19 The ALJ did not reject Dr. Shen's opinion in favor of a non-examining reviewing
20 physician. Rather, the ALJ rejected Dr. Shen's opinion as unsupported by medical records and
21 inconsistent. While the ALJ did give substantial weight to the opinions of the reviewing
22 physicians, this was not used as a reason for discounting Dr. Shen's opinion. An unsupported
23 opinion of a treating physician may be rejected. See Johnson v. Shalala, 60 F.3d 1428, 1432 (9th
24 Cir. 1995). The undersigned finds the reasons the ALJ articulated for rejecting Dr. Shen's
25 opinion to be clear and convincing and supported by substantial evidence. Thus, there was no
26 error.

1 **B. Credibility Determination**

2 Next, plaintiff argues the ALJ erred in finding plaintiff not credible, and failing to
3 articulate any reasons for his finding. The defendant counters that the reasons given were several
4 and sufficient.

5 The Commissioner determines whether a disability applicant is credible, and the
6 court defers to the Commissioner’s discretion if the Commissioner used the proper process and
7 provided proper reasons. See Saelee v. Chater, 94 F.3d 520, 522 (9th Cir. 1996). An explicit
8 credibility finding must be supported by specific, cogent reasons. See Rashad v. Sullivan, 903
9 F.2d 1229, 1231 (9th Cir. 1990). General findings are insufficient. See Lester v. Chater, 81 F.3d
10 821, 834 (9th Cir. 1995). Rather, the Commissioner must identify what testimony is not credible
11 and what evidence undermines the testimony. See id. Moreover, unless there is affirmative
12 evidence in the record of malingering, the Commissioner’s reasons for rejecting testimony as not
13 credible must be “clear and convincing.” See id.; see also Carmickle v. Commissioner, 533 F.3d
14 1155, 1160 (9th Cir. 2008) (citing Lingenfelter v Astrue, 504 F.3d 1028, 1936 (9th Cir. 2007),
15 and Gregor v. Barnhart, 464 F.3d 968, 972 (9th Cir. 2006)).

16 If there is objective medical evidence of an underlying impairment, the
17 Commissioner may not discredit a claimant’s testimony as to the severity of symptoms merely
18 because they are unsupported by objective medical evidence. See Bunnell v. Sullivan, 947 F.2d
19 341, 347-48 (9th Cir. 1991) (en banc). As the Ninth Circuit explained in Smolen v. Chater:

20 The claimant need not produce objective medical evidence of the
21 [symptom] itself, or the severity thereof. Nor must the claimant produce
22 objective medical evidence of the causal relationship between the
23 medically determinable impairment and the symptom. By requiring that
the medical impairment “could reasonably be expected to produce” pain or
another symptom, the Cotton test requires only that the causal relationship
be a reasonable inference, not a medically proven phenomenon.

24 80 F.3d 1273, 1282 (9th Cir. 1996) (referring to the test established in Cotton v. Bowen, 799
25 F.2d 1403 (9th Cir. 1986)).

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1 The Commissioner may, however, consider the nature of the symptoms alleged,
2 including aggravating factors, medication, treatment, and functional restrictions. See Bunnell,
3 947 F.2d at 345-47. In weighing credibility, the Commissioner may also consider: (1) the
4 claimant’s reputation for truthfulness, prior inconsistent statements, or other inconsistent
5 testimony; (2) unexplained or inadequately explained failure to seek treatment or to follow a
6 prescribed course of treatment; (3) the claimant’s daily activities; (4) work records; and (5)
7 physician and third-party testimony about the nature, severity, and effect of symptoms. See
8 Smolen, 80 F.3d at 1284 (citations omitted). It is also appropriate to consider whether the
9 claimant cooperated during physical examinations or provided conflicting statements concerning
10 drug and/or alcohol use. See Thomas v. Barnhart, 278 F.3d 947, 958-59 (9th Cir. 2002). If the
11 claimant testifies as to symptoms greater than would normally be produced by a given
12 impairment, the ALJ may disbelieve that testimony provided specific findings are made. See
13 Carmickle, 533 F.3d at 1161 (citing Swenson v. Sullivan, 876 F.2d 683, 687 (9th Cir. 1989)).

14 Regarding reliance on a claimant’s daily activities to find testimony of disabling
15 pain not credible, the Social Security Act does not require that disability claimants be utterly
16 incapacitated. See Fair v. Bowen, 885 F.2d 597, 602 (9th Cir. 1989). The Ninth Circuit has
17 repeatedly held that the “mere fact that a plaintiff has carried out certain daily activities . . . does
18 not . . . [necessarily] detract from her credibility as to her overall disability.” See Orn v. Astrue,
19 495 F.3d 625, 639 (9th Cir. 2007) (quoting Vertigan v. Heller, 260 F.3d 1044, 1050 (9th Cir.
20 2001)); see also Howard v. Heckler, 782 F.2d 1484, 1488 (9th Cir. 1986) (observing that a claim
21 of pain-induced disability is not necessarily gainsaid by a capacity to engage in periodic restricted
22 travel); Gallant v. Heckler, 753 F.2d 1450, 1453 (9th Cir. 1984) (concluding that the claimant
23 was entitled to benefits based on constant leg and back pain despite the claimant’s ability to cook
24 meals and wash dishes); Fair, 885 F.2d at 603 (observing that “many home activities are not
25 easily transferable to what may be the more grueling environment of the workplace, where it
26 might be impossible to periodically rest or take medication”). Daily activities must be such that

1 they show that the claimant is “able to spend a substantial part of his day engaged in pursuits
2 involving the performance of physical functions that are transferable to a work setting.” Fair,
3 885 F.2d at 603. The ALJ must make specific findings in this regard before relying on daily
4 activities to find a claimant’s pain testimony not credible. See Burch v. Barnhart, 400 F.3d 676,
5 681 (9th Cir. 2005).

6 As to plaintiff’s credibility, the ALJ stated:

7 After careful consideration of the evidence, the undersigned finds
8 that the claimant’s medically determinable impairments could
9 reasonably be expected to cause the alleged symptoms; however,
10 the claimant’s statements concerning the intensity, persistence and
11 limiting effects of these symptoms are not entirely credible for the
12 reasons explained in this decision.

(CAR 22).

13 Plaintiff argues no further reasons were given, and such boiler plate rejection is
14 insufficient. The undersigned agrees that if that was all the ALJ said in regards to plaintiff’s
15 credibility, such a statement would be insufficient. However, plaintiff ignores the rest of the
16 ALJ’s opinion where in he stated:

17 The claimant has described activities of daily living, which are not
18 as limited as one would expect considering the complaints of
19 disabling symptoms. The claimant describes himself as a world
20 class drummer who continues to teach weekly drum lessons to a
21 number of students (Exhibit 5E/5). The claimant is able to tune his
22 own drumheads (Hearing Testimony). The claimant continues to
23 help with household chores (Exhibit 2F/20). Specifically, the
24 claimant washes dishes, does the laundry, mows the lawn, and
25 cooks for his wife and kids at least five times a week (Exhibits
26 4F/6 and 5E/3). The claimant spends at least 45 minutes a day
preparing meals for his family (Exhibit 5E/3). The claimant is able
to go grocery shopping and spends about two to three hours doing
so (Exhibit 5E/4). The claimant is able to go out alone (Exhibit
5E/4). The claimant has a Chihuahua for whom he cares for
(Exhibit 5E/2). Caring for a pet dog requires regular attention and
some physical effort. The claimant is able to pay bills, count
change, handle a savings account and use a checkbook (Exhibit
5E/4). The claimant talks on the phone, texts and chats everyday
(Exhibit 5E/5). The claimant watches approximately two hours of
television each day (Hearing Testimony). The claimant has a
Facebook, Twitter and email account (Hearing Testimony).

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1 Although the claimant has received various forms of treatment for
2 the allegedly disabling symptoms, which would normally weigh
3 somewhat in the claimant's favor, the record also reveals that the
4 treatment has been generally successful in controlling those
5 symptoms. On December 29, 2012, the claimant reported that the
6 Norco prescription managed his pain well enough for him to be
7 able to carry on with activities of daily living (Exhibit 11F/18).
8 Again, on January 28, 2013, the claimant reported to his doctor that
9 he did not have any issues with the Norco prescription, he did not
10 need to adjust his prescription and the claimant denied any
11 breakthrough or increased pain (Exhibit 11F/27). On March 18,
12 2013, the claimant reported to his doctor that he was able to carry
13 on with his activities of daily living (Exhibit 11F/34).

14 Additionally, inconsistent statements made on the record regarding
15 the claimant's post-onset date work activities undermine his
16 credibility. At the hearing, the claimant testified that after 2004, he
17 has only worked as a drum lessons teacher. Yet, on March 24,
18 2013, during his consultative examination, the claimant reported
19 not only being a current drum lessons teacher but also serving as a
20 subcontractor for different farms (Exhibit 4F/3). The claimant did
21 not mention his subcontracting work at either his hearing or in his
22 disability documents. Further, the reported post-onset work
23 activities suggest that at least at times, the claimant's daily
24 activities have been greater than the claimant is generally reporting.
25 Not only did the claimant fail to report all post-onset work
26 activities at his hearing, he also denied performing as a drummer
for years[,] failing to clarify that post-onset date he has performed
drum shows. On December 6, 2011, the claimant reported to his
doctor that he was excited about an upcoming drumming show that
he had in Modesto and to prepare he had been increasing his work
outs (Exhibit 2F/59).

Further, a review of the claimant's work history shows that the
claimant worked only sporadically prior to the alleged disability
onset date, which raises a question as to whether the claimant's
continuing unemployment is actually due to medical impairments.
This skepticism is supported by the fact that the claimant stopped
working years before the alleged onset date on December 30, 2004
because his "job ran out" and not solely due to his medical
conditions (Exhibit 3E/2).

Another important consideration in this case is that the claimant
has experienced other non-medical problems such as an
incarceration and family issues that suggest that at least some of
the claimant's difficulties may be situational and not medical in
nature (Exhibits 4F/2 and 2F/64/65). The claimant even explained
to his psychiatric consultative examiner that many of his suicidal
thoughts and auditory hallucinations started after having issues
with his sons and being arrested (Exhibit 4F/2). During a routine
doctor's visit, the claimant reported that he was upset because of

1 his wife's recent surgery (Exhibit 2F/64/65). Given that these
2 situational issues have likely improved, there is a great likelihood
3 that the symptoms presented directly following aggravating events
4 are not indicative of the claimant's longitudinal mental health.
5 Additionally, the claimant's psychiatric consultative examiner
6 surmised that there was a good likelihood that the claimant's
7 mental condition would improve within the next twelve months
8 (Exhibit 4F/7).

9 ...

10 Finally, the claimant's demeanor while testifying at the hearing
11 was generally unpersuasive. It is emphasized that this observation
12 is only one among many being relied on in assessing credibility and
13 is not determinative. The undersigned concludes that the
14 claimant's allegations of debilitating pain and disabling functional
15 limitations are not fully credible. Neither the objective medical
16 evidence nor the subjective allegations, to the extent that they are
17 reasonably credible, warrant any more restrictive functional
18 limitations than those the undersigned has found in his case.

19 (CAR 22-23).

20 Plaintiff's argument that the ALJ gave no reasons for discounting his testimony is
21 unsupported by the record. As set forth above, the ALJ gave several reasons for finding
22 plaintiff's testimony not credible, including his daily activities, successful medical treatment, his
23 inconsistent statements, his work history, and his demeanor at the hearing. The undersigned
24 finds these reasons sufficient for the credibility determination, and supported by substantial
25 evidence, as cited by the ALJ in his opinion. See Fair, 885 F.2d at 604 ("Where, as here, the ALJ
26 has made specific findings justifying a decision to disbelieve an allegation of excess pain, and
those findings are supported by substantial evidence in the record, our role is not to second-guess
that decision.")

IV. CONCLUSION

Based on the foregoing, the court concludes that the Commissioner's final
decision is based on substantial evidence and proper legal analysis. Accordingly, IT IS HEREBY
ORDERED that:

1. Plaintiff's motion for summary judgment (Doc. 22) is denied;
2. Defendant's cross-motion for summary judgment (Doc. 23) is granted; and

3. The Clerk of the Court is directed to enter judgment and close this file.

DATED: March 30, 2017



CRAIG M. KELLISON
UNITED STATES MAGISTRATE JUDGE

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