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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

STEVEN R CARLSON,
Plaintiff,
v.
COMMISSIONER OF SOCIAL
SECURITY,
Defendant.

No. 2:16-cv-1484-CKD

ORDER

Plaintiff Steven R. Carlson seeks judicial review of a final decision by the Commissioner of Social Security (“Commissioner”) denying plaintiff’s application for Supplemental Security Income (“SSI”) under Title XVI of the Social Security Act (“Act”).¹ In his motion for summary judgment, plaintiff principally argues that the ALJ’s decision “lacks the support of substantial evidence and is a result of legal error.” (ECF No. 21 at 4.) The Commissioner opposed plaintiff’s motion and filed a cross-motion for summary judgment. (ECF No. 26.)

After carefully considering the record and the parties’ briefing, the court DENIES plaintiff’s motion for summary judgment, GRANTS the Commissioner’s cross-motion for summary judgment, and AFFIRMS the Commissioner’s final decision.

¹ Both parties have consented to this court’s jurisdiction. ECF Nos. 7 and 8.

1 I. BACKGROUND

2 Plaintiff was born on August 19, 1963; he has completed high school and one year of
3 college; and he has previously worked as an exterminator and a carpet layer.² (Administrative
4 Transcript (“AT”) 24, 33, 131.) On November 6, 2012, plaintiff applied for SSI, alleging that his
5 disability began on the same date. (AT 9, 23.) Plaintiff claimed that he was disabled due to left
6 subtalar dislocation (ankle injury) and compacted calcaneal (heel bone) fracture. (AT 43.) After
7 plaintiff’s application was denied initially and on reconsideration, an ALJ conducted a hearing on
8 October 1, 2014. (AT 21–41.) The ALJ subsequently issued a decision dated November 24,
9 2014, determining that plaintiff had not been under a disability as defined in the Act, from
10 November 6, 2012, the date the application was filed, through the date of the ALJ’s decision.
11 (AT 9–16.) The ALJ’s decision became the final decision of the Commissioner when the
12 Appeals Council denied plaintiff’s request for review on April 25, 2016. (AT 1–3.) Plaintiff
13 subsequently filed this action on June 29, 2016, to obtain judicial review of the Commissioner’s
14 final decision. (ECF No. 1.)

15 II. ISSUES PRESENTED

16 On appeal, plaintiff raises the issue whether the ALJ improperly discounted plaintiff’s
17 credibility. (ECF No. 21 at 4.)

18 III. LEGAL STANDARD

19 The court reviews the Commissioner’s decision to determine whether (1) it is based on
20 proper legal standards pursuant to 42 U.S.C. § 405(g), and (2) substantial evidence in the record
21 as a whole supports it. Tackett v. Apfel, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial
22 evidence is more than a mere scintilla, but less than a preponderance. Connett v. Barnhart, 340
23 F.3d 871, 873 (9th Cir. 2003) (citation omitted). It means “such relevant evidence as a reasonable
24 mind might accept as adequate to support a conclusion.” Orn v. Astrue, 495 F.3d 625, 630 (9th

25 _____
26 ² Because the parties are familiar with the factual background of this case, including plaintiff’s
27 medical history, the court does not exhaustively relate those facts in this order. The facts related
28 to plaintiff’s impairments and treatment will be addressed insofar as they are relevant to the issues
presented by the parties’ respective motions.

1 Cir. 2007), quoting Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005). “The ALJ is
2 responsible for determining credibility, resolving conflicts in medical testimony, and resolving
3 ambiguities.” Edlund v. Massanari, 253 F.3d 1152, 1156 (9th Cir. 2001) (citation omitted). “The
4 court will uphold the ALJ’s conclusion when the evidence is susceptible to more than one rational
5 interpretation.” Tommasetti v. Astrue, 533 F.3d 1035, 1038 (9th Cir. 2008).

6 IV. DISCUSSION

7 A. Summary of the ALJ’s Findings

8 The ALJ evaluated plaintiff’s entitlement to SSI pursuant to the Commissioner’s standard
9 five-step analytical framework.³ At step one, the ALJ concluded that plaintiff has not engaged in
10 substantial gainful activity since November 6, 2012, the date of his application. (AT 11.) At step

11 ³ Disability Insurance Benefits are paid to disabled persons who have contributed to the Social
12 Security program. 42 U.S.C. §§ 401 et seq. Supplemental Security Income is paid to disabled
13 persons with low income. 42 U.S.C. §§ 1382 et seq. Both provisions define disability, in part, as
14 an “inability to engage in any substantial gainful activity” due to “a medically determinable
15 physical or mental impairment. . . .” 42 U.S.C. §§ 423(d)(1)(a) & 1382c(a)(3)(A). A parallel
16 five-step sequential evaluation governs eligibility for benefits under both programs. See 20
17 C.F.R. §§ 404.1520, 404.1571-76, 416.920 & 416.971-76; Bowen v. Yuckert, 482 U.S. 137, 140-
18 42 (1987). The following summarizes the sequential evaluation:

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

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

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

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

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

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

27 The claimant bears the burden of proof in the first four steps of the sequential evaluation
28 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 two, the ALJ found that the plaintiff “has the following severe impairments: Osteoarthritis and
2 Allied Disorders; Fracture(s) of Lower Extremities; Other and Unspecified Arthropathies;
3 Dysfunction – Major Joints.” (Id.) However, at step three the ALJ concluded that the plaintiff
4 “does not have an impairment or combination of impairments that meets or medically equals the
5 severity of one of the listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1.” (Id.)

6 Before proceeding to step four, the ALJ assessed plaintiff’s RFC, finding that plaintiff
7 could “perform light work as defined in 20 C.F.R. § 416.967(b) with the following additional
8 limitations: can never engage in foot control operation with the left foot; can never climb ladders,
9 ropes, or scaffolds.” (Id.) At step four the ALJ determined that plaintiff “is unable to perform
10 any past relevant work.” (AT 14.) However, at step five the ALJ found that, in light of plaintiff’s
11 age, education, work experience, RFC, and the vocational expert’s (“VE”) testimony, there were
12 jobs that existed in significant numbers in the national economy that plaintiff could have
13 performed. (AT 15.)

14 Thus, the ALJ concluded that plaintiff “has not been under a disability, as defined in the
15 Social Security Act, since November 6, 2012, the date the application was filed.” (AT 16.)

16 B. Plaintiff’s Substantive Challenges to the Commissioner’s Determinations

17 Plaintiff argues that “the ALJ’s decision must be reversed because it lacks substantial
18 evidence and is a result of legal error.” (ECF No. 21 at 4.) Specifically, plaintiff asserts that “the
19 ALJ failed to articulate sufficient reasons to find Mr. Carlson not credible.” (Id.)

20 In Lingenfelter v. Astrue, 504 F.3d 1028 (9th Cir. 2007), the Ninth Circuit Court of
21 Appeals summarized the ALJ’s task with respect to assessing a claimant’s credibility:

22 To determine whether a claimant’s testimony regarding subjective
23 pain or symptoms is credible, an ALJ must engage in a two-step
24 analysis. First, the ALJ must determine whether the claimant has
25 presented objective medical evidence of an underlying impairment
26 which could reasonably be expected to produce the pain or other
27 symptoms alleged. The claimant, however, need not show that her
28 impairment could reasonably be expected to cause the severity of
the symptom she has alleged; she need only show that it could
reasonably have caused some degree of the symptom. Thus, the
ALJ may not reject subjective symptom testimony . . . simply
because there is no showing that the impairment can reasonably
produce the degree of symptom alleged.

1 Second, if the claimant meets this first test, and there is no evidence
2 of malingering, the ALJ can reject the claimant’s testimony about
3 the severity of her symptoms only by offering specific, clear and
4 convincing reasons for doing so. . . .

4 Lingenfelter, 504 F.3d at 1035-36 (citations and quotation marks omitted). “At the same time, the
5 ALJ is not required to believe every allegation of disabling pain, or else disability benefits would
6 be available for the asking. . . .” Molina v. Astrue, 674 F.3d 1104, 1112 (9th Cir. 2012).

7 “The ALJ must specifically identify what testimony is credible and what testimony
8 undermines the claimant’s complaints.” Valentine v. Comm’r of Soc. Sec. Admin., 574 F.3d 685,
9 693 (9th Cir. 2009) (quoting Morgan v. Comm’r of Soc. Sec. Admin., 169 F.3d 595, 599 (9th Cir.
10 1999)). In weighing a claimant’s credibility, an ALJ may consider, among other things, the
11 “[claimant’s] reputation for truthfulness, inconsistencies either in [claimant’s] testimony or
12 between [her] testimony and [her] conduct, [claimant’s] daily activities, [her] work record, and
13 testimony from physicians and third parties concerning the nature, severity, and effect of the
14 symptoms of which [claimant] complains.” Thomas v. Barnhart, 278 F.3d 947, 958-59 (9th Cir.
15 2002) (modification in original) (quoting Light v. Soc. Sec. Admin., 119 F.3d 789, 792 (9th Cir.
16 1997)). If the ALJ’s credibility finding is supported by substantial evidence in the record, the
17 court “may not engage in second-guessing.” Id. at 959.

18 As an initial matter, the court notes that the ALJ did not entirely discredit plaintiff’s
19 allegations of functional limitations due to his left ankle injury. Indeed, the ALJ limited plaintiff
20 to never engaging in foot control operation with the left foot and never climbing ladders, ropes, or
21 scaffolds. (AT 11.) Nevertheless, to the extent that the ALJ discounted plaintiff’s testimony
22 regarding his symptoms and functional limitations, the ALJ provided several specific, clear, and
23 convincing reasons for doing so. The ALJ reasoned as follows:

24 Credibility is reduced by several factors. For example, . . . the
25 claimant has engaged in a somewhat normal level of daily activity
26 and interaction. During the hearing, the claimant admitted activities
27 of daily living including driving and using a lawn mower. He plays
28 Frisbee with his dog. Ex 12F/5 Although . . . [his] activities of
daily living were somewhat limited, some of the physical and
mental abilities and social interactions required in order to perform
these activities are the same as those necessary for obtaining and
maintaining employment and are inconsistent with the presence of

1 an incapacitating or debilitating condition. The claimant's ability to
2 participate in such activities undermined the credibility of the
3 claimant's allegations . . . Moreover, even if the claimant's daily
4 activities are truly as limited as alleged, it is difficult to attribute the
5 degree of limitation to the claimant's medical condition, as opposed
6 to other reasons, in view of the relatively benign medical evidence
7 and other factors discussed in this decision. . . .

8 Finally, the credibility . . . is diminished because those allegations
9 are greater than expected in light of the objective evidence of
10 record. The medical evidence indicates that claimant received
11 routine conservative treatment for the impairments. Moreover, the
12 positive objective clinical and diagnostic findings since the alleged
13 onset date detailed below do not support more restrictive functional
14 limitations than those assessed herein.

15 (AT 12.) In sum, the ALJ discounted plaintiff's testimony because it was inconsistent with: his
16 daily activities; the objective medical evidence; and his course of conservative treatment.

17 1. *Daily Activities*

18 Substantial evidence supports the ALJ's finding that plaintiff's daily activities are
19 inconsistent with his allegations of disabling symptoms and limitations. (AT 12.)

20 "While a claimant need not vegetate in a dark room in order to be eligible for benefits, the
21 ALJ may discredit a claimant's testimony when the claimant reports participation in everyday
22 activities indicating capacities that are transferable to a work setting. . . Even where those
23 activities suggest some difficulty functioning, they may be grounds for discrediting the claimant's
24 testimony to the extent that they contradict claims of a totally debilitating impairment." Molina,
25 674 F.3d at 1112-13 (citations and quotation marks omitted); see also Burch v. Barnhart, 400 F.3d
26 676, 680 (9th Cir. 2005) (ALJ properly considered claimant's ability to care for her own needs,
27 cook, clean, shop, interact with her nephew and boyfriend, and manage her finances and those of
28 her nephew in the credibility analysis); Morgan v. Comm'r of Soc. Sec., 169 F.3d 595, 600 (9th
Cir. 1999) (ALJ's determination regarding claimant's ability to "fix meals, do laundry, work in
the yard, and occasionally care for his friend's child" was a specific finding sufficient to discredit
the claimant's credibility).

Here, the record demonstrates that plaintiff still drives (AT 36); plays Frisbee with his dog
(AT 312); mows his lawn and works in the yard (AT 30-31); and helps with home remodeling
(painting) (AT 33).

1 To be sure, the record also contains some contrary evidence, such as plaintiff's need to
2 raise his leg to alleviate pain twice during the day, suggesting that plaintiff's activities are more
3 limited. (AT 28.) However, it is the function of the ALJ to resolve any ambiguities, and the court
4 finds the ALJ's assessment to be reasonable and supported by substantial evidence. See Rollins
5 v. Massanari, 261 F.3d 853, 857 (9th Cir. 2001) (affirming ALJ's credibility determination even
6 where the claimant's testimony was somewhat equivocal about how regularly she was able to
7 keep up with all of the activities and noting that the ALJ's interpretation "may not be the only
8 reasonable one"). As the Ninth Circuit explained:

9 It may well be that a different judge, evaluating the same evidence,
10 would have found [the claimant's] allegations of disabling pain
11 credible. But, as we reiterate in nearly every case where we are
12 called upon to review a denial of benefits, we are not triers of fact.
13 Credibility determinations are the province of the ALJ. . . . Where,
14 as here, the ALJ has made specific findings justifying a decision to
15 disbelieve an allegation of excess pain, and those findings are
16 supported by substantial evidence in the record, our role is not to
17 second-guess that decision.

18 Fair v. Bowen, 885 F.2d 597, 604 (9th Cir. 1989).

19 2. *Objective Medical Evidence*

20 "[A]fter a claimant produces objective medical evidence of an underlying impairment, an
21 ALJ may not reject a claimant's subjective complaints based solely on a lack of medical evidence
22 to fully corroborate the alleged severity of pain." Burch v. Barnhart, 400 F.3d 676, 680 (9th Cir.
23 2005) (citing Bunnell v. Sullivan, 947 F.2d 341, 345 (9th Cir. 1991)). Although lack of medical
24 evidence cannot form the sole basis for discounting plaintiff's subjective symptom testimony, it is
25 nevertheless a relevant factor for the ALJ to consider. Burch, 400 F.3d at 681.

26 Here, the ALJ's conclusion that the objective medical evidence undermined plaintiff's
27 credibility is supported by substantial evidence. The ALJ specifically relied on objective
28 evidence in the record that in January 2010, plaintiff was able to ambulate symmetrically when
working on his home exercise program (AT 183); that post surgery plaintiff repeatedly
demonstrated good range of motion in his left ankle (AT 253, 257, 260); that post surgery his left
Achilles tendon remained flexible (AT 253, 257, 260); and that in April 2013, Paul J. Braaton
M.D. found plaintiff's hindfoot in good position with only mild tenderness over the

1 calcaneocuboid joint, and only mild to moderate tenderness over the lateral ankle (AT 312). (See
2 12–14.) Therefore, the objective evidence the ALJ relied on was a relevant factor in her
3 credibility determination. See Burch, 400 F.3d at 681.

4 3. *Conservative Treatment*

5 Plaintiff’s relatively conservative treatment was also a proper consideration. See
6 Tommasetti v. Astrue, 533 F.3d 1035, 1039-40 (9th Cir. 2008) (reasoning that a favorable
7 response to conservative treatment undermines complaints of disabling symptoms); Parra v.
8 Astrue, 481 F.3d 742, 751 (9th Cir. 2007) (“We have previously indicated that evidence of
9 conservative treatment is sufficient to discount a claimant’s testimony regarding severity of an
10 impairment”); Fair v. Bowen, 885 F.2d 597, 604 (9th Cir. 1989).

11 The ALJ specifically relied on the conservative treatment plaintiff received to discount his
12 credibility. (See AT 12.) While plaintiff had surgery on his left foot on May 6, 2011 due to a
13 crush injury he received on the job (AT 319), he received conservative treatment thereafter,
14 suggesting that his symptoms were not as severe as alleged. For example, the record shows that
15 plaintiff was treated with motion-control rocker bottom shoes. (AT 322, 254.) The record also
16 shows that plaintiff received steroid injections from Dr. Braaton for pain. (AT 312–13.) While
17 Dr. Braaton suggested that plaintiff may need more aggressive treatment in the future (AT 313),
18 the records do not reveal any such treatment. Furthermore, in addition to determining credibility,
19 the ALJ is responsible for resolving any ambiguities. See Edlund, 253 F.3d at 1156. Thus, the
20 ALJ’s conclusion that plaintiff’s conservative treatment undermined his credibility is supported
21 by substantial evidence in the record.

22 4. *Improper Reasons*

23 Plaintiff also argues that the ALJ relied on an improper reason to discount plaintiff’s
24 credibility when the ALJ pointed to inconsistencies between the plaintiff’s subjective complaints
25 and the ALJ’s RFC determination. (ECF No. 21 at 12.) Plaintiff asserts that the RFC
26 determination is the end result of an ALJ’s analysis and cannot be used as a starting point against
27 which to measure the credibility of a plaintiff. (See Id.) However, a careful reading of the ALJ’s
28 reasoning demonstrates that the ALJ was not using the RFC determination as a starting point in

1 her analysis. (See AT 11–14.) The ALJ’s exact words in question are:

2 Thus after careful consideration of the evidence, the undersigned
3 finds that the claimant’s medically determinable impairments could
4 reasonably be expected to cause the alleged symptoms; however,
5 the claimant’s statements concerning the intensity, persistence and
6 limiting effects of these symptoms are not credible to the extent
7 they are inconsistent with the above residual functional capacity
8 assessment.

6 (AT 12.) Importantly, this statement only comes after the ALJ has explained her other reasons
7 for discounting plaintiff’s credibility, each of which are analyzed above. (See AT 12.) Therefore,
8 this statement was not an improper reason for discrediting plaintiff’s credibility. Rather, it was a
9 sentence that the ALJ used to conclude her reasoning.

10 In any event, even if this were an improper reason that the ALJ relied upon, the error is
11 harmless because the ALJ provided several other valid reasons for only partially crediting
12 plaintiff’s testimony. See Molina, 674 F.3d at 1115 (harmless error when ALJ provided one or
13 more invalid reasons for disbelieving a claimant’s testimony, but also provided valid reasons that
14 were supported by the record).⁴

15 V. CONCLUSION

16 For the foregoing reasons, IT IS HEREBY ORDERED that:

- 17 1. Plaintiff’s motion for summary judgment (ECF No. 21) is DENIED.
- 18 2. The Commissioner’s cross-motion for summary judgment (ECF No. 26) is
19 GRANTED.
- 20 3. The final decision of the Commissioner is AFFIRMED, and judgment is entered
21 for the Commissioner.
- 22 4. The Clerk of Court is ordered to close this case.

23 Dated: August 29, 2017

24 
25 CAROLYN K. DELANEY
26 UNITED STATES MAGISTRATE JUDGE

25 14/ss.16-1484.carlson.order re MSJ

27 ⁴ Plaintiff also argues that this matter should be remanded for an award of benefits. (ECF No. 21
28 at 13–14.) Yet, as explained above, there are no grounds to reverse the ALJ’s decision.
Therefore, there are no grounds to remand this case for an award of benefits.