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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JEFFREY P. AGUILAR,
Plaintiff,
v.
NANCY A. BERRYHILL,
Acting Commissioner of Social Security
Defendant.

No. 2:17-cv-00003-AC

ORDER

Plaintiff seeks judicial review of a final decision of the Commissioner of Social Security (“Commissioner”) denying his application for supplemental security income (“SSI”) under Title II of the Social Security Act (“the Act”), 42 U.S.C. §§ 401-34.¹ For the reasons that follow plaintiff’s motion for summary judgment will be DENIED and defendant’s cross-motion for summary judgment will be GRANTED.

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¹ DIB is paid to disabled persons who have contributed to the Disability Insurance Program, and who suffer from a mental or physical disability. 42 U.S.C. § 423(a)(1); Bowen v. City of New York, 476 U.S. 467, 470 (1986).

1 I. PROCEDURAL BACKGROUND

2 Plaintiff initially applied for DIB on September 5, 2011, Administrative Record (“AR”) at
3 162 (“Initial Decision,” AR at 162-177).² The disability onset date was alleged to be April 1,
4 2010. Id. The claim was initially denied on February 23, 2012, and upon reconsideration on
5 October 19, 2012. Id. Plaintiff then filed a request for hearing on December 12, 2012 (20 C.F.R.
6 415.1429 *et seq.*), and appeared at the hearing held on June 27, 2013, presided over by ALJ
7 Timothy Snelling and attended by plaintiff’s attorney Mary E. Heard. AR at 162, 177.

8 On August 7, 2013, the ALJ found plaintiff “not disabled” under sections 216(i) and
9 223(d) of Title II of the Act, 42 U.S.C. §§ 416(i), 423(d). AR at 177. Plaintiff appealed this
10 decision. AR at 183. On April 8, 2015, the Appeals Council granted plaintiff’s request to review
11 under the error of law provision of the Social Security Administration regulations (20 C.F.R.
12 404.970). AR at 183. The Appeals Council vacated the decision of the ALJ and remanded the
13 case for further hearing. AR at 183-84.

14 On November 25, 2015, the ALJ heard the remanded case. AR at 29 (“Decision,” AR at
15 29-54). This hearing was presided over by ALJ Timothy Snelling and was attended by John J.
16 Komar, an Impartial Vocational Expert (“VE”) and by plaintiff’s attorney Amanda Foss. AR at
17 29. On January 14, 2016, the ALJ found plaintiff “not disabled” under sections 216(i) and 223(d)
18 of the Social Security Act. AR at 54. On October 28, 2016, the Appeals Council denied
19 plaintiff’s request for review, leaving the ALJ’s decision as the final decision of the
20 Commissioner of Social Security. AR at 8-10.

21 Plaintiff filed this action on December 30, 2016. ECF No. 1; see 42 U.S.C. §§ 405(g),
22 1383c(3). The parties consented to the jurisdiction of the magistrate judge. ECF Nos. 5 & 6.
23 The parties’ cross-motions for summary judgment, based upon the Administrative Record filed by
24 the Commissioner, have been fully briefed. ECF No. 15 (plaintiff’s summary judgment motion
25 dated August 11, 2017) and ECF No. 20 (Commissioner’s cross-motion for summary judgment
26 dated October 25, 2017).

27
28 ² The AR is electronically filed in multiple segments at ECF Nos. 9-3 to 9-48.

1 II. FACTUAL BACKGROUND

2 Plaintiff was born on December 14, 1966, and accordingly was, at age 43, a younger
3 person under the regulations on the alleged disability onset date.³ AR at 52. Plaintiff has at least
4 a high school education, and can communicate in English. Id.

5 III. LEGAL STANDARDS

6 The Commissioner’s decision that plaintiff is not disabled will be upheld “if it is
7 supported by substantial evidence and if the Commissioner applied the correct legal standards.”
8 Howard ex rel. Wolff v. Barnhart, 341 F.3d 1006, 1011 (9th Cir. 2003). “The findings of the
9 Secretary as to any fact, if supported by substantial evidence, shall be conclusive . . .”. Andrews
10 v. Shalala, 53 F.3d 1035, 1039 (9th Cir. 1995) *quoting* 42 U.S.C. § 405(g).

11 Substantial evidence is “more than a mere scintilla,” but “may be less than a
12 preponderance.” Molina v. Astrue, 674 F.3d 1104, 1111 (9th Cir. 2012). Substantial evidence
13 “means such relevant evidence as a reasonable mind might accept as adequate to support a
14 conclusion.” Richardson v. Perales, 402 U.S. 389, 401 (1971) (internal quotation marks omitted).
15 “While inferences from the record can constitute substantial evidence, only those ‘reasonably
16 drawn from the record’ will suffice.” Widmark v. Barnhart, 454 F.3d 1063, 1066 (9th Cir.
17 2006)(citation omitted). Although this court cannot substitute its discretion for that of the
18 Commissioner, the court nonetheless must review the record as a whole, “weighing both the
19 evidence that supports and the evidence that detracts from the [Commissioner’s] conclusion.”
20 Desrosiers v. Secretary of HHS, 846 F.2d 573, 576 (9th Cir 1988); Jones v. Heckler, 760 F.2d
21 993, 995 (9th Cir. 1985) (“The court must consider both evidence that supports and evidence that
22 detracts from the ALJ’s conclusion; it may not affirm simply by isolating a specific quantum of
23 supporting evidence.”).

24 “The ALJ is responsible for determining credibility, resolving conflicts in medical
25 testimony, and resolving ambiguities.” Edlund v. Massanari, 253 F.3d 1152, 1156 (9th Cir.
26 2001). “Where the evidence is susceptible to more than one rational interpretation, one of which
27 supports the ALJ’s decision, the ALJ’s conclusion must be upheld.” Thomas v. Barnhart, 278

28 ³ See 20 C.F.R. § 404.1563(c) (“younger person”).

1 F.3d 947, 954 (9th Cir. 2002). However, the court may review only the reasons stated by the ALJ
2 in his decision “and may not affirm the ALJ on a ground upon which he did not rely.” Orn v.
3 Astrue, 495 F.3d 625, 630 (9th Cir. 2007); Connett v. Barnhart, 340 F.3d 871, 874 (9th Cir. 2003)
4 (“It was error for the district court to affirm the ALJ’s credibility decision based on evidence that
5 the ALJ did not discuss”).

6 The court will not reverse the Commissioner’s decision if it is based on harmless error,
7 which exists only when it is “clear from the record that an ALJ’s error was inconsequential to the
8 ultimate nondisability determination.” Robbins v. Commissioner, 466 F.3d 880, 885 (9th Cir.
9 2006) (quoting Stout v. Commissioner, 454 F.3d 1050, 1055 (9th Cir. 2006)); see also Burch v.
10 Barnhart, 400 F.3d 676, 679 (9th Cir. 2005).

11 IV. RELEVANT LAW

12 Disability Insurance Benefits and Supplemental Security Income are available for every
13 eligible individual who is “disabled.” 42 U.S.C. §§ 402(d)(1)(B)(ii) (DIB), 1381a (SSI). Plaintiff
14 is “disabled” if he is “unable to engage in substantial gainful activity due to a medically
15 determinable physical or mental impairment” Bowen v. Yuckert, 482 U.S. 137, 140 (1987)
16 (quoting identically worded provisions of 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A)).

17 The Commissioner uses a five-step sequential evaluation process to determine whether an
18 applicant is disabled and entitled to benefits. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4);
19 Barnhart v. Thomas, 540 U.S. 20, 24-25 (2003)(setting forth the “five-step sequential evaluation
20 process to determine disability” under Title II and Title XVI. The following summarizes the
21 sequential evaluation.

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

24 20 C.F.R. § 404.1520(a)(4)(i), (b).

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

27 Id. §§ 404.1520(a)(4)(ii), (c).

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

3 Id. §§ 404.1520(a)(4)(iii), (d).

4 Step four: Does the plaintiff's residual functional capacity make him capable of
5 performing his past work? If so, the plaintiff is not disabled. If not, proceed to step five.

6 Id. §§ 404.1520(a)(4)(iv), (e), (f).

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

9 Id. §§ 404.1520(a)(4)(v), (g).

10 The plaintiff bears the burden of proof in the first four steps of the sequential evaluation
11 process. 20 C.F.R. §§ 404.1512(a) ("In general, you have to prove to us that you are blind or
12 disabled"), 416.912(a)(same). However, "[a]t the fifth step of the sequential analysis, the burden
13 shifts to the Commissioner to demonstrate that the plaintiff is not disabled and can engage in
14 work that exists in significant numbers in the national economy." Hill v. Astrue, 698 F.3d 1153,
15 1161 (9th Cir. 2012).

16 V. THE ALJ's FINDINGS

17 The ALJ made the following findings:

- 18 1. The claimant last met the insured status requirements of the
19 Social Security Act on September 30, 2013.
- 20 2. [Step 1] The claimant did not engage in substantial gainful
21 activity during the period from his alleged onset date of April 1,
2010 through his date last insured of September 30, 2013 (20
CFR 404.1571 *et seq.*).
- 22 3. [Step 2] During the period adjudicated, the claimant has had the
23 following medically severe combination of impairments: major
24 depressive disorder; diabetes mellitus; degenerative disc disease
25 of the lumbar spine; adjustment disorder; arthritis of the left
26 shoulder status post arthroscopy and debridement; alcohol
dependence in recent remission; polysubstance abuse in full
27 remission; chronic pain syndrome; recurrent headaches; right
28 carpal tunnel syndrome status post carpal tunnel release; anxiety
disorder; and mild degenerative changes and sprain/strain of the
cervical spine (20 CFR 404.1520(c)).

- 1 4. [Step 3] Through the date last insured, the claimant did not have
2 an impairment or combination of impairments that met or
3 medically equaled the severity of one of the listed impairments
4 in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR
5 404.1520(d), 404.1525 and 404.1526).
- 6 5. [Residual Functional Capacity (“RFC”)] After careful
7 consideration of the entire record, the undersigned finds that,
8 through the date last insured, the claimant had the residual
9 functional capacity to perform a wide range of light work as
10 defined in 20 CFR 404.1467(b): the claimant can lift and carry
11 twenty pounds occasionally and ten pounds frequently; he can
12 stand and walk six of eight hours; he can occasionally stoop; he
13 can reach above shoulder level with his left upper extremity
14 occasionally; he cannot climb ladders, ropes, or scaffolding; and
15 he can have no more than occasional face-to-face interaction
16 with the general public, co-workers, or supervisors, which is
17 one third of the workday with each group.
- 18 6. [Step 4] The claimant is unable to perform any past relevant
19 work (20 CFR 404.1565).
- 20 7. [Step 5] The claimant was born on December 14, 1966 and was
21 43 years old, which is defined as a younger individual age 18-
22 49, on the alleged disability date (20 CFR 404.1563).
- 23 8. [Step 5, continued] The claimant has at least a high school
24 education and is able to communicate in English (20 CFR
25 404.1564).
- 26 9. [Step 5, continued] Transferability of job skills is not material
27 to the determination of disability because using the Medical-
28 Vocational Rules as a framework supports a finding that the
claimant is “not disabled,” whether or not the claimant has
transferrable job skills (see SSR 82-41 and 20 CFR Part 404,
Subpart P, Appendix 2).
10. [Step 5, continued] 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 404.1469 and 404.1569(a)).
11. [Step 5, continued] Considering the claimant’s age, education,
work experience, and residual functional capacity, there were
other jobs that existed in significant numbers in the national
economy that the claimant also could have performed (20 CFR
404.1469 and 404.1569(a)).
12. The claimant was not under a disability, as defined in the Social
Security Act, at any time from April 1, 2010, the alleged onset
date, through September 30, 2013, the date last insured (20 CFR
404.1520(f)).

1 IV. ANALYSIS

2 Plaintiff alleges that the ALJ erred by improperly evaluating his own testimony.⁴ ECF
3 No. 15 at 3. Plaintiff argues that the ALJ used unacceptable boilerplate language, failing to point
4 to the specific findings that show he did not arbitrarily discredit plaintiff’s testimony. Id. at 10
5 (“the ALJ failed to articulate any rationale sufficient to demonstrate Jeffrey Aguilar was anything
6 other than credible”). Plaintiff requests that the matter be reversed and remanded to the
7 Commissioner for an immediate award of benefits or, in the alternative, further administrative
8 proceedings. Upon a complete review of the record and relevant law, the court finds that the ALJ
9 did not err in discounting plaintiff’s subjective testimony.

10 The ALJ’s credibility determination must be supported by findings that are sufficiently
11 specific to allow a court to find that the ALJ did not “arbitrarily discredit” a claimant’s
12 statements. Thomas, 278 F.3d at 958. The evaluation of subjective testimony requires a two-step
13 analysis. First, the ALJ must examine whether there is objective medical evidence of an
14 underlying impairment which could reasonably be expected to produce the pain or other
15 symptoms alleged. Vasquez v. Astrue, 572 F.3d 586, 591 (9th Cir.2009). If this is found, and
16 there is no evidence of malingering, the ALJ must give “specific, clear, and convincing reasons”
17 to reject plaintiff’s claims regarding the severity of his symptoms. Id.

18 A non-exhaustive list of factors the ALJ may consider when weighing the claimant’s
19 credibility include (1) the claimant’s reputation for truthfulness, (2) inconsistencies in either the
20 claimant’s testimony or between his testimony and conduct, (3) the claimant’s daily activities, (4)
21 the claimant’s work record, and (5) testimony from physicians and third parties concerning the
22 nature, severity, and effect of the symptoms of which claimant complains. Thomas, 278 F.3d at

23 _____
24 ⁴ Although the court understands plaintiff’s motion to challenge only the treatment of plaintiff’s
25 own testimony, plaintiff switches gender pronouns throughout the motion, raising the remote
26 possibility that counsel may also be challenging the treatment of plaintiff’s wife’s lay witness
27 testimony. Even if this motion was intended to also challenge the lack of credibility finding
28 regarding Mrs. Julie Aguilar, this would not alter this court’s decision. See Valentine v.
Commissioner, 574 F.3d 685, 694 (because “the ALJ provided clear and convincing reasons for
rejecting [the claimant’s] own subjective complaints, and because [the claimant’s wife’s lay
witness] testimony was similar to such complaints, it follows that the ALJ also gave germane
reasons for rejecting [the wife’s] testimony”). The ALJ noted that Mrs. Aguilar’s lay witness
testimony largely echoed the testimony of her husband. See, e.g., AR at 35.

1 858-59. An ALJ is not “required to believe every allegation” of disabling pain. Fair v. Bowen,
2 885 F.2d 597, 603 (9th Cir. 1989). “If the ALJ’s credibility finding is supported by substantial
3 evidence in the record, [the court] may not engage in second-guessing.” Thomas, 278 F.3d at
4 859.

5 In this case the ALJ found that plaintiff’s underlying impairments could reasonably
6 produce the symptoms and pain alleged, but provided ample specific, clear, and convincing
7 reasons to support his finding that plaintiff’s subjective testimony is not credible. AR 35-52.
8 First, the ALJ found plaintiff’s statements to be inconsistent with the medical record. AR at 37.
9 Plaintiff testified at various hearings that he is unable to work due to a combination of severe
10 weekly headaches, arthritis in his neck and back, muscle spasms, shoulder pain, depression, and
11 constant anxiety. AR at 36. The ALJ noted that in the medical record, the plaintiff failed to voice
12 regular complaints of pain or limitations. AR at 38. Additionally, the ALJ pointed to lab work
13 indicating that, overall, his diabetes was adequately controlled with treatment and that his
14 physical examinations were unremarkable with “no tenderness or pain with palpation and/or
15 range of motion.” AR at 37, 1426, 1434, 1443, 1504, 1509-10. Further, the ALJ found the
16 medical record indicated plaintiff had reported a pattern of overall improvement with
17 conservative pain management treatment for his cervical and lumbar impairments, as well as his
18 migraines. AR at 41-42, 1504, 1538, 1590, 1611. The ALJ found plaintiff’s impairments of his
19 diabetes and pain were managed “with medications and lifestyle changes,” contrary to plaintiff’s
20 claims of persistently incapacitating impairments. AR at 37.

21 Regarding plaintiff’s mental impairments, the ALJ found that the plaintiff’s psychiatric
22 impairments continued to improve due to adjustments in medications and tools used to manage
23 symptoms. AR at 38. For instance, the ALJ found that, in 2015, the record indicated that the
24 plaintiff consistently “reported and demonstrated” gradual improvement of his symptoms due to
25 continued counselling and medication. Id. During this time, the ALJ stated, plaintiff was able to
26 stay home and take care of a newborn baby. AR at 39, 1402 (chart notes stating “father to be 1st
27 child, less stress, feels fine”), 1444. The record also shows plaintiff had recently stopped
28 attending group therapy sessions and reduced his individual counseling sessions. AR at 38. The

1 ALJ found this evidence from the medical record was inconsistent with plaintiff's testimony
2 regarding the severity of his mental impairments.

3 The ALJ also identified inconsistencies between plaintiff's testimony and his daily
4 activities, as well as noting observations from a medical professional that plaintiff is not reliable.
5 With respect to the observations of others, the ALJ relied on the opinion of examining physician
6 Dr. Gerald C. Barnes, who opined that he believes the plaintiff "tends to embellish his complaints
7 and demonstrates less than full effort during examination." AR at 52, 1385. Reliance on such an
8 observation is proper grounds for discounting plaintiff's subjective statements; an ALJ may
9 consider observations when assessing the claimant's credibility and functional abilities. See, e.g.,
10 20 C.F.R. § 404.1529(c)(3) ("We will consider . . . observations by our employees and other
11 persons").

12 With respect to daily activities, the ALJ noted that plaintiff was able to do laundry, mow
13 the lawn, take out the trash, shop for groceries, prepare simple meals, drive, manage his finances,
14 follow instructions, care for his grooming and hygiene, use telephones and computers, provide
15 care for his son, travel, and manage his medical care and appointments. AR at 33. The ALJ
16 found this evidence of plaintiff's daily activities to be inconsistent with his testimony regarding
17 his limitations and the severity of his impairments. AR at 37. When coupled with an objective
18 medical record that does not support plaintiff's claims of limitations and severity, a finding that
19 plaintiff's daily activities are inconsistent with plaintiff's testimony is sufficient to discredit the
20 plaintiff. Carmickle v. Commissioner, SSA, 533 F.3d 1155, 1163 (9th Cir. 2008).

21 In evaluating plaintiff's credibility, the ALJ sufficiently and specifically addressed the
22 claimant's reputation for truthfulness, the claimant's daily activities, and contradictions between
23 plaintiff's testimony and the medical record. Based on these findings, which are supported by
24 substantial evidence, the ALJ reasonably concluded that the plaintiff's allegations as to the
25 intensity, duration, and functionally limiting effects of his impairments were not fully credible.
26 AR at 39. For this reason, plaintiff's motion for summary judgment is DENIED.

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V. CONCLUSION

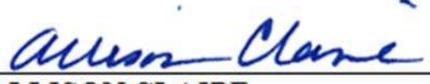
For the reasons set forth above, IT IS HEREBY ORDERED that:

- 1. Plaintiff's motion for summary judgment (ECF No. 15) is DENIED;
- 2. The Commissioner's cross-motion for summary judgment (ECF No. 20) is

GRANTED;

- 3. The Clerk of the Court shall enter judgment for the Commissioner, and close this case.

DATED: February 7, 2018



ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE