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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
EUREKA DIVISION

DAVID ALLEN MILLOT,
Plaintiff,
v.
NANCY A. BERRYHILL,
Defendant.

Case No. 17-cv-04807-RMI
**ORDER RE MOTIONS FOR
SUMMARY JUDGMENT**
Re: Dkt. Nos. 20, 21

Plaintiff David Allen Millot seeks judicial review of an administrative law judge (“ALJ”) decision denying his application for benefits under Title II the Social Security Act. Plaintiff’s request for review of the Administrative Law Judge’s (“ALJ”) unfavorable decision was denied by the Appeals Council. (Administrative Record (“AR”) 1-4.) The ALJ’s decision is therefore the “final decision” of the Commissioner of Social Security, which this court may review. *See* 42 U.S.C. §§ 405(g), 1383(c)(3). Both parties have consented to the jurisdiction of a magistrate judge (Docs. 6, 11) and both parties have moved for summary judgment. (Docs. 20, 21.) For the reasons stated below, the court will deny Plaintiff’s motion for summary judgment, and will grant Defendant’s motion for summary judgment.

LEGAL STANDARDS

The Commissioner’s findings “as to any fact, if supported by substantial evidence, shall be conclusive.” 42 U.S.C. § 405(g). A district court has a limited scope of review and can only set aside a denial of benefits if it is not supported by substantial evidence or if it is based on legal error. *Flaten v. Sec’y of Health & Human Servs.*, 44 F.3d 1453, 1457 (9th Cir. 1995). Substantial evidence is “more than a mere scintilla but less than a preponderance; it is such relevant evidence

1 as a reasonable mind might accept as adequate to support a conclusion.” *Sandgate v. Chater*, 108
2 F.3d 978, 979 (9th Cir. 1997). “In determining whether the Commissioner’s findings are supported
3 by substantial evidence,” a district court must review the administrative record as a whole,
4 considering “both the evidence that supports and the evidence that detracts from the
5 Commissioner’s conclusion.” *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1998). The
6 Commissioner’s conclusion is upheld where evidence is susceptible to more than one rational
7 interpretation. *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005).

8 **PROCEDURAL HISTORY**

9 Plaintiff filed his initial application for Title II benefits on June 4, 2013, alleging an onset
10 of disability date of April 11, 2013. (AR 175.) Plaintiff’s application was denied initially and on
11 reconsideration. (AR 104-111.) Plaintiff filed a request for hearing with an ALJ and a hearing was
12 held on December 3, 2015. (AR 41.) The ALJ issued an unfavorable decision on March 24, 2016.
13 (AR 26-36.) Plaintiff requested review by the Appeals Council on May 23, 2016. (AR 173.) The
14 request for review was denied on June 19, 2017. (AR 1-4.)

15 **THE FIVE STEP SEQUENTIAL ANALYSIS FOR DETERMINING DISABILITY**

16 A person filing a claim for social security disability benefits (“the claimant”) must show
17 that he has the “inability to do any substantial gainful activity by reason of any medically
18 determinable physical or mental impairment” which has lasted or is expected to last for twelve or
19 more months. *See* 20 C.F.R. §§ 416.920(a)(4)(ii), 416.909.¹ The ALJ must consider all evidence
20 in the claimant’s case record to determine disability (*see id.* § 416.920(a)(3)), and must use a five
21 step sequential evaluation process to determine whether the claimant is disabled (*see id.* §
22 416.920). “[T]he ALJ has a special duty to fully and fairly develop the record and to assure that
23 the claimant’s interests are considered.” *Brown v. Heckler*, 713 F.2d 441, 443 (9th Cir. 1983).
24 Here, the ALJ evaluated Plaintiff’s application for benefits under the required five-step sequential
25 evaluation process. (AR 26-36.)

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28 ¹ The regulations for supplemental security income (Title XVI) and disability insurance benefits (Title II) are virtually identical though found in different sections of the CFR. For the sake of convenience, the court will generally cite to the SSI regulations herein unless noted otherwise.

1 At Step One, the claimant bears the burden of showing he has not been engaged in
2 “substantial gainful activity” since the alleged date he became disabled. *See* 20 C.F.R. §
3 416.920(b). If the claimant has worked and the work is found to be substantial gainful activity, the
4 claimant will be found not disabled. *See id.* The ALJ found that Plaintiff met the insured
5 requirement through December 31, 2018, and had not engaged in substantial gainful activity since
6 April 11, 2013, his alleged onset date. (AR 28.)

7 At Step Two, the claimant bears the burden of showing that he has a medically severe
8 impairment or combination of impairments. *See* 20 C.F.R. § 416.920(a)(4)(ii), (c). “An
9 impairment is not severe if it is merely ‘a slight abnormality (or combination of slight
10 abnormalities) that has no more than a minimal effect on the ability to do basic work activities.’”
11 *Webb v. Barnhart*, 433 F.3d 683, 686 (9th Cir. 2005) (quoting S.S.R. No. 96–3(p) (1996)). The
12 ALJ found that Plaintiff suffered from the following severe impairments: morbid obesity, atrial
13 fibrillation, bilateral knee osteoarthritis, major depressive disorder, and post-traumatic stress
14 disorder. (AR 28.)

15 At Step Three, the ALJ compares the claimant’s impairments to the impairments listed in
16 appendix 1 to subpart P of part 404. *See* 20 C.F.R. § 416.920(a)(4)(iii), (d). The claimant bears the
17 burden of showing his impairments meet or equal an impairment in the listing. *Id.* If the claimant
18 is successful, a disability is presumed and benefits are awarded. *Id.* If the claimant is unsuccessful,
19 the ALJ proceeds to Step Four. *See id.* § 416.920(a)(4)(iv), (e). Here, the ALJ found that Plaintiff
20 did not have an impairment or combination of impairments that met or medically equaled one of
21 the listed impairments. (AR 29.)

22 At Step Four, the ALJ must determine the claimant’s residual functional capacity (“RFC”)
23 and then determine whether the claimant has the RFC to perform the requirements of his past
24 relevant work. *See id.* § 416.920(e) and 416.945. The ALJ found Plaintiff had the RFC to perform
25 medium work, as defined in 20 CFR 404.1567(c), except that he is able to stand/walk for four
26 hours in an eight-hour work day; he needs a cane for prolonged ambulation or ambulation over
27 uneven terrain; he is able to sit for six hours in an eight-hour work day; he is limited to occasional
28 climbing of stairs, ladders, ropes, and scaffolds, he is limited to occasional crawling, he is able to

1 perform all other postural activities frequently, he is limited to simple, repetitive tasks, and he is
2 limited to occasional interactions with coworkers and the public. (AR 30-31.) The ALJ found
3 that Plaintiff was unable to perform any past relevant work. (AR 34.)

4 At Step Five, the ALJ must determine whether the claimant is able to do any other work
5 considering his RFC, age, education, and work experience. *See* 20 CFR § 416.920(g). If the
6 claimant is able to do other work, he is not disabled. The ALJ found that there were jobs that
7 existed in significant numbers in the national economy that Plaintiff could have performed,
8 including hand packager and final inspector. (AR 34-35.) Thus, the ALJ found Plaintiff was not
9 disabled from April 11, 2013, through the date of the decision. (AR 35.)

10 DISCUSSION

11 Rejection of Opinions of Treating Physicians

12 Plaintiff contends that the ALJ committed harmful legal error by rejecting the assessments
13 completed by Plaintiff's treating medical providers, Courtney Ladika, M.D., and Hal Grotke,
14 M.D.. Plaintiff claims that these physicians assessed limitations that would make it impossible for
15 him to perform any sustained work.

16 "In conjunction with the relevant regulations, [courts] have . . . developed standards that
17 guide [their] analysis of an ALJ's weighing of medical evidence." *Ryan v. Comm'r of Soc. Sec.*,
18 528 F.3d 1194, 1198 (9th Cir. 2008). Courts "distinguish among the opinions of three types of
19 physicians: (1) those who treat the claimant (treating physicians); (2) those who examine but do
20 not treat the claimant (examining physicians); and (3) those who neither examine nor treat the
21 claimant (nonexamining physicians)." *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996). "As a
22 general rule, more weight should be given to the opinion of a treating source than to the opinion of
23 doctors who do not treat the claimant." *Id.* (citing *Winans v. Bowen*, 853 F.2d 643, 647 (9th Cir.
24 1987). "If a treating or examining doctor's opinion is contradicted by another doctor's opinion, an
25 ALJ may only reject it by providing specific and legitimate reasons that are supported by
26 substantial evidence." *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005). An ALJ can
27 satisfy the "substantial evidence" requirement by "setting out a detailed and thorough summary of
28 the facts and conflicting clinical evidence, stating his interpretation thereof, and making findings."

1 *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998).

2 Plaintiff raises several arguments. First, Plaintiff argues that the ALJ erred in rejecting Dr.
3 Ladika’s assessment of Plaintiff on the ground that Plaintiff was recently fired from his job and so
4 was under unusual stress. Plaintiff argues that the ALJ failed to explain how Plaintiff’s stress
5 level at any given time would invalidate Dr. Ladika’s opinions on Plaintiff’s physical capacities,
6 citing *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 884 (9th Cir. 2006) (finding that even when
7 “facially legitimate reasons” support an adverse determination, “complete lack of meaningful
8 explanation gives this court nothing with which to assess its legitimacy”).

9 The ALJ’s discussion regarding Dr. Ladika included the following:

10
11 I have considered the opinion of the claimant’s primary care physician, Courtney Ladika,
12 M.D., as reflected (sic) a form completed by Dr. Ladika for the purpose of the disability
13 evaluation (exhibit 5F). I find that Dr. Ladika’s opinion is not entitled to great weight
14 because Dr. Ladika first treated the claimant on April 25, 2013 (exhibit 6F/8), at which
15 time she noted that the claimant was under unusual stress, having been fired from his job.
16 Dr. Ladika subsequently noted that medications helped (exhibit 6F/5). Therefore, there is
17 no basis, other than the claimant’s own statements, for the limitations indicated. In this
18 regard, I note that the treatment notes on June 26, 2013, which is the date the disability
19 paperwork was completed (exhibit 6F/4) note that the claimant had an outburst at work
20 (exhibit 6F/3); there is no support for the significant physical limitations indicated. Dr.
21 Ladika indicated that the earliest date for which the limitations indicated applies is 2006,
22 which shows that she did not base her assessment on her own observations as she did not
23 treat the claimant in 2006 any time prior to the date the claimant was fired from his job.

24 (AR 31.)

25 It is undisputed that when Dr. Ladika started treating Plaintiff, he had just been fired from
26 his job and had a higher than normal level of stress. As Defendant notes, 42 U.S.C. §
27 1382c(a)(3)(A) defines a “disability” as “[inability] to engage in any substantial gainful activity
28 . . . for a continuous period of not less than twelve months.” Thus, the ALJ properly considered
the situational and temporary nature of Plaintiff’s symptoms when Dr. Ladika first met him. *See*
generally, Chesler v. Colvin, 649 Fed. App’x 631, 632 (9th Cir. 2016) (unpublished) (affirming
finding of no severe mental impairment where the claimant was looking for work and his “mental
health symptoms were situational” and “unlikely to persist once [his] circumstances improved”).

Second, Plaintiff challenges the ALJ’s observation regarding Dr. Ladika’s finding that the

1 earliest date for Plaintiff’s limitations was 2006, arguing that Plaintiff had been a patient for
2 fifteen years at the clinic where Dr. Ladika practices, and that the doctor therefore had access to 15
3 years of Plaintiff’s medical records. However, Plaintiff points to nothing in the record that shows
4 that Dr. Ladika reviewed any historical medical records. Defendant argues, in fact, that the record
5 contained scant treatment records from Dr. Ladika’s office, with the earliest records dated March
6 2011. (AR 369-416.) Further, as Defendant argues, even if Dr. Ladika did review historical
7 records, this would not explain her assessment of debilitating limitations during a time when
8 Plaintiff was working and did not assert disability. It is undisputed that Plaintiff worked from
9 2006 through 2013, and was fired for reasons other than his physical complaints. (AR 31.)

10 Third, Plaintiff addresses the ALJ’s statement that “Dr. Ladika subsequently noted that
11 medications helped.” (AR 31, citing AR 373.) Plaintiff argues that the language regarding
12 medications helping in the document referenced by the ALJ is this: “depression – taking
13 fluoxetine, tolerating well, no side effects, mood is improved.” (AR 373.) Plaintiff correctly
14 claims that Dr. Ladika did not state at that visit that the medications helped improve Plaintiff’s
15 physical pain or physical functioning. However, this does not indicate error on the part of the ALJ
16 in not affording great weight to the opinion of treating physician Dr. Ladika. The ALJ expressly
17 found that there was no basis, other than Plaintiff’s own statements, for the limitations found by
18 Dr. Ladika. He noted in particular that the treatment notes on the date the disability paper work
19 was submitted “provided no support for the significant physical limitations indicated.” (AR 31.)

20 Fourth, Plaintiff finds fault with the ALJ’s analysis of the opinion of Dr. Grotke, M.D..

21 The ALJ stated:

22 Another treating source, Hal Grotke, M.D., completed a statement indicating that the
23 claimant is able to sit for seven hours total in an eight-hour work day and stand/walk for up
24 to two hours total; with the need for a sit/stand option; lifting/carrying less than ten pounds
25 occasionally and up to ten pounds rarely; with rare twisting and climbing of stairs and no
26 stooping, crouching, or climbing ladders; fine and gross manipulations limited to 10% of
27 the work day; constant pain that limits concentration; and expected absences occurring
28 more than four days per month (exhibit 12F). I note that Dr. Grotke advised that these
limitations existed beginning in 2006 but the claimant had “variable” treatment for more
than three years, with more treatment “lately,” which is an inadequate basis for the
limitations described. As with Dr. Ladika’s opinion, as discussed above, the limitations
indicated are inconsistent with the claimant having worked from 2006 until he was fired in
2013 for reasons other than his physical complaints. Nevertheless, I find that Dr. Grotke’s

1 statements indicating that the claimant needs a cane for ambulation are supported by the
2 medical record and they are therefore incorporated in the above residual functional
3 capacity.

3 AR 31.

4 Dr. Grotke’s statement regarding Plaintiff under “Frequency and length of contact,” was
5 “variable but monthly lately; more than three years.” Plaintiff claims that Dr. Grotke’s report that
6 Plaintiff had more treatment “lately” adds to the legitimacy of the doctor’s opinion, because this
7 provided more information on which to base his findings. Plaintiff also claims that Dr. Grotke’s
8 assessment does not state that Plaintiff’s frequency of treatment was the only basis for his
9 assessment finding. Further, Plaintiff claims that the ALJ offered no basis for the conclusion that
10 Dr. Grotke needed to do anything other than respond to the questions as written, and that there is
11 no authority that a “check-the-box” form is any less reliable than any other type of form. These
12 claims are all essentially strawmen, as the ALJ did not make any contrary findings, *i.e.*, the ALJ
13 did not find that Plaintiff having more treatment lately did not add to the legitimacy of Dr.
14 Grotke’s opinions, the ALJ did not find that the doctor’s assessment stated that the frequency of
15 treatment was the only basis for the assessment finding, and the ALJ did not state that Dr. Grotke
16 needed to do more than to respond to the questions as written. Because Plaintiff’s claims, even if
17 true, are of no consequence, the court declines to address their merits.

18 Finally, Plaintiff cites the ALJ’s finding that Dr. Grotke’s assessed limitations, “were
19 inconsistent with the claimant having worked from 2006 until he was fired in 2013 for reasons
20 other than his physical complaints.” (AR 31.) Plaintiff argues that the ALJ failed to connect the
21 fact that Plaintiff worked in the past, and was fired from his job, to any specific limitations in Dr.
22 Grotke’s assessment. This argument is meritless, as the ALJ listed the limitations in Dr. Grotke’s
23 assessment two sentences earlier. While Plaintiff stresses that the ALJ did not identify which
24 assessed limitations were contradicted in the medical records, this again is simply a strawman.
25 The ALJ did not state that any of the limitations assessed by Dr. Grotke were contradicted in the
26 medical records; he stated that they were inconsistent with the claimant having worked from 2006
27 until he was fired in 2013 for reasons other than his physical complaints.

28 After considering all of Plaintiff’s arguments regarding the weight given to the opinions of

1 his treating physicians, the court finds that Plaintiff has demonstrated neither legal error by the
2 ALJ nor a lack of substantial evidence to support the ALJ's decision.

3 Credibility Determination

4 Plaintiff contends that the ALJ committed harmful legal error by rejecting his symptom
5 testimony.

6 The ALJ held in part as follows regarding Plaintiff's testimony:

7 The claimant testified that he does very little during the day. He plays golf once a month,
8 having previously played golf seven days a week.

9 Upon questioning, the claimant admitted that he stole from an employer because he wanted
10 to be fired. The claimant explained that he would not have quit otherwise, despite having
11 difficulty performing the requirements of the job.

12 After careful consideration of the evidence, I find that the claimant's medically
13 determinable impairments could reasonably be expected to cause the alleged symptoms;
14 however, the claimant's statements concerning the intensity, persistence and limiting
15 effects of these symptoms are not entirely credible for the reasons explained in this
16 decision. There are objective findings in the medical record that establish the presence of
17 multiple severe impairments. However, the claimant's complaints of pain are not well-
18 documented in the medical record and there (sic) are no (sic) corroborated by any physical
19 findings such as range of motion limitations or muscle atrophy. The claimant is not
20 receiving significant treatment for his alleged physical complaints except medication, and
21 his alleged mental dysfunction is very focused on his past employment with the post office.
22 I have considered the claimant's written statements (exhibit 3E) and written statements
23 submitted by the claimant's spouse (exhibit 4E) but find that the record as a whole does
24 not support the level of impairment indicated. In addition, the claimant's ability to play
25 golf is inconsistent with his testimony that he does not do any standing or walking, and is
26 unable to use his arms due to repetitive use injuries. The claimant listed numerous
27 medication side effects that he has not reported to his treating physicians. The claimant
28 worked for several years despite his physical complaints and stopped working due to
interpersonal conflicts, which he is better able to manage after having therapy. The
claimant's theft from an employer was reasonably explained as a set-up for termination,
but his stated difficulties at work were the result of interpersonal problems unrelated to his
chronic complaints of pain and other symptoms.

AR 33.

Plaintiff argues that the ALJ erred by rejecting Plaintiff's symptom testimony on the
ground that it was inconsistent with the medical evidence of record. Plaintiff argues that it is error
to discount the severity of a claimant's symptoms, as opposed to the existence of the underlying
medical impairments which the ALJ acknowledged, based on lack of support by objective
evidence, citing *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1996). However, in *Lester*, the Ninth

1 Circuit held that, “[o]nce the claimant produces medical evidence of an underlying impairment,
2 the Commissioner may not discredit the claimant’s testimony as to subjective symptoms merely
3 because they are unsupported by objective evidence.” (Emphasis added.) That was not the case
4 here, as the ALJ considered not only the facts that Plaintiff’s alleged symptoms were not well-
5 documented in the medical record, and were not corroborated by any physical findings, but also
6 that: 1) Plaintiff was not receiving significant treatment for his alleged physical problems except
7 medications; 2) Plaintiff’s alleged mental problem was focused on his former employment; 3) the
8 record as a whole did not support the level of impairment Plaintiff claimed; 4) Plaintiff’s ability to
9 play golf was inconsistent with his testimony that he does not do any walking or standing and is
10 unable to use his arms; 5) in connection with his disability claim, Plaintiff listed numerous
11 medication side effects that he had not reported to his treating physicians; 6) Plaintiff worked for
12 several years despite his physical complaints; 6) Plaintiff stopped working due to interpersonal
13 conflicts, which he is better able to handle after having therapy; and 7) Plaintiff’s stated
14 difficulties at work were the result of interpersonal problems unrelated to his chronic complaints
15 of pain and other symptoms. (AR 33.)

16 Plaintiff claims that the ALJ erred in finding that his ability to occasionally play golf
17 invalidated his testimony regarding his symptoms, citing *Garrison v. Colvin*, 759 F.3d 995, 1012
18 (9th Cir. 2014) (discussing distinction between routine activities of daily living and requirements
19 of a full time job). Plaintiff argues that the ALJ did not consider the entirety of Plaintiff’s
20 testimony regarding this activity. This testimony was that he played golf about once a month, and
21 always used a golf cart. (AR 60.) Plaintiff testified that his therapist told him he should get out of
22 the house. (*Id.*) Plaintiff also stated that he could not swing his golf club over his head, he had
23 “no backswing,” and he could not use his lower body. (*Id.*) The court finds nothing in the ALJ’s
24 decision that indicates that he did not consider Plaintiff’s stated limitations in regard to golfing.
25 The court finds no error in the ALJ’s conclusion that Plaintiff’s ability to play golf, even in the
26 limited manner to which he testified, was inconsistent with the claim that he did no standing or
27 walking and was unable to use his arms. Further, the court notes that Plaintiff’s monthly golf
28 game was but one of several factors the ALJ found which caused him to discredit Plaintiff’s

1 symptom testimony.

2 Stressing that the ALJ considered the fact that Plaintiff worked for several years despite his
3 physical complaints and was terminated for interpersonal conflicts “unrelated to his chronic
4 complaints of pain and other symptoms,” Plaintiff complains that the ALJ did not connect his
5 conclusions to any facts in the medical evidence that invalidated Plaintiff’s symptom testimony.
6 Again, Plaintiff attempts to create an issue where none exists. Both of Plaintiff’s treating
7 physicians found that his physical limitations existed as early as 2006, a fact the ALJ expressly
8 noted earlier in his decision. (AR 31.) As the ALJ stated, Plaintiff’s own testimony established
9 the facts that he worked until he was fired in 2013 for stealing and that he stole because he wanted
10 to be fired. (AR 58.) *See* SSF 16-3p (“Adjudicators must limit their evaluation to the
11 individual’s statements about his or her symptoms and the evidence in the record that is relevant to
12 the individual’s impairments.”). The ALJ simply considered these uncontested facts. The court
13 finds no error.

14 RFC Determination

15 Plaintiff contends that the ALJ committed harmful error by determining Plaintiff’s need for
16 a cane without any articulated basis supported by substantial evidence in the record. Specifically,
17 Plaintiff claims that the ALJ’s determination of his need for a cane only for “prolonged
18 ambulation or over uneven terrain” (AR 30) is not tied to any substantial evidence. Plaintiff
19 argues that this is error, and that the ALJ failed to provide a basis for determining that Plaintiff
20 only needed a cane for prolonged ambulation or uneven terrain. Plaintiff further claims that the
21 ALJ’s finding regarding Plaintiff’s need for a cane is inconsistent with all medical opinions in the
22 record.

23 As Defendant argues, given the variance between the different functional assessments, it is
24 not surprising that the ALJ did not adopt any one physician’s opinion in its entirety. *See*
25 *Magallanes v. Bowen*, 881 F.2d 747, 753 (9th Cir. 1989) (holding ALJ need not adopt a medical
26 opinion in its entirety just because he attributes it significant weight). The ALJ stated expressly
27 that he based his RFC determination on consideration of the entire record. (AR 30.) As to his
28 RFC determination that Plaintiff needs a cane for prolonged ambulation or ambulation over

1 uneven terrain, the ALJ identified the pertinent evidence supporting his RFC finding. (AR 29, 533,
2 534). The ALJ noted that primary care physician Dr. Grotke “noted the presence of knee pain,
3 with an antalgic gait and use of a cane,” but that consultative examiner Dr. Wagner “noted a
4 ‘fairly normal exam’ of the knee.” (AR 29.) Earlier in his decision the ALJ found that the report
5 from the post-hearing examination of Plaintiff conducted by Dr. Wager was entitled to great
6 weight because the limitations indicated were consistent with the record as a whole. (AR 31-32.)
7 Among the observations made by Dr. Wagner were that Plaintiff used a cane but did not appear to
8 lean on it and that a cane “may be helpful for long distance ambulation.” (AR 29, 533, 534). In
9 addition, the ALJ found that the report from Dr. Tang, who evaluated Plaintiff at the State
10 agency’s request, was entitled to greater weight than the opinions of Drs. Ladika and Grotke. (AR
11 31.) The ALJ found that Dr. Tang’s opinion that Plaintiff was able to perform medium work was
12 consistent with the record as a whole, “which reflects complaints of body pain with no clear
13 etiology and good response to pain medications.” (*Id.*) The evidence before the ALJ related to
14 Dr. Tang’s report included the fact that Plaintiff was not using a cane when he went to his October
15 27, 2013 examination with Dr. Tang, yet he was able to walk without assistance and had a normal
16 gait. (AR 424–25.) Thus, the court rejects Plaintiff’s claim that the ALJ’s finding regarding
17 Plaintiff’s need for a cane is inconsistent with all medical opinions in the record. Further, while
18 Plaintiff espouses a different interpretation of the evidence regarding his use of a cane, the ALJ’s
19 interpretation of the evidence was supported by substantial evidence and will be upheld. *See Lewis*
20 *v. Astrue*, 498 F.3d 909, 911 (9th Cir. 2007) (“if evidence is susceptible of more than one rational
21 interpretation, the decision of the ALJ must be upheld”).

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CONCLUSION

Based on the above, the court finds that Plaintiff has failed to demonstrate either a lack of substantial evidence or legal error in connection with the ALJ’s decision. Accordingly, Plaintiff’s motion for summary judgment is hereby DENIED and Defendant’s motion for summary judgment is hereby GRANTED.

IT IS SO ORDERED.

Dated: October 26, 2018



ROBERT M. ILLMAN
United States Magistrate Judge