

United States District Court
For the Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MAHMOUD ASCARIE)	Case No.: 5:13-CV-01323-EJD
Plaintiff,)	ORDER DENYING PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT; GRANTING DEFENDANT’S MOTION FOR SUMMARY JUDGMENT
v.)	
CAROLYN W. COLVIN, Acting Commissioner of Social Security)	
Defendant.)	
		[Re: Docket Item Nos. 15, 17]

I. Introduction

Plaintiff Mahmoud Ascarie (“Plaintiff”) brings this action pursuant to 42 U.S.C. § 405(g) to obtain review of the Social Security Administration’s final decision denying his disability benefits. See Docket Item No. 15. Defendant Carolyn W. Colvin, Acting Commissioner of the Social Security Administration (“Defendant”), opposes Plaintiff’s Motion for Summary Judgment (“MSJ”) and seeks summary judgment affirming the decision of the ALJ. See Docket Item No. 17.

Having considered the relevant pleadings and the administrative record, the Court has determined that the administrative law judge’s (“ALJ”) decision should be affirmed. Plaintiff’s Motion for Summary Judgment will therefore be denied and Defendant’s cross-motion will be granted.

1 **II. Background**

2 **A. Procedural History**

3 On September 4, 2009, Plaintiff filed an application for social security benefits, alleging
4 disability beginning December 12, 2007. See Administrative Record (“AR”) at 112-13. On March
5 23, 2010, Plaintiff’s claim was denied. Id. at 85-88. On April 16, 2010, Plaintiff filed for
6 reconsideration. Id. at 90. Plaintiff’s disability claim was denied again on July 1, 2010. Id. at 91-
7 95. On July 15, 2010, Plaintiff filed a written request for a hearing. Id. at 101. On June 2, 2011,
8 the hearing was held, and Plaintiff and a vocational expert both testified. See id. at 68-82. On June
9 28, 2011, ALJ Frederick C. Michaud issued a written decision that Plaintiff was not disabled, and
10 had the residual functioning capacity (“RFC”) to perform light work prior to October 1, 2009,
11 under sections 216(i) and 223(d) of the Social Security Act. Id. at 30-40.

12 Plaintiff sought review of the ALJ’s determination, and review was denied by the Appeals
13 Council on June 15, 2012. Id. at 11-16. Therefore, the ALJ’s decision became the final decision of
14 the Social Security Administration as to Plaintiff’s case. Id. at 11.

15 On August 10, 2012, Plaintiff filed a request for an extension to file a civil action to review
16 the ALJ’s decision, which was granted on February 25, 2013. Id. at 1-5. Plaintiff, pro se, filed a
17 Complaint against the Defendant on March 25, 2013. See Docket Item No. 1. Plaintiff filed the
18 MSJ on October 15, 2013. See Dkt. No. 15. Defendant filed its cross-motion on November 12,
19 2013. See Dkt. No. 17. Plaintiff filed an Opposition to Defendant’s cross-motion on June 6, 2014.
20 See Docket Item No. 21.

21 **B. Plaintiff’s Personal, Vocational, and Medical History**

22 Plaintiff was born on October 10, 1943. AR at 30. He holds a Ph.D. in Chemistry, and
23 previously worked as a chemistry professor. Id. In 2000, the Social Security Administration found
24 Plaintiff to be disabled. Id. at 34. However, in 2002 he resumed teaching and his disability
25 benefits were terminated in June 2005. Id. In 2009 through 2010, Plaintiff collected
26 unemployment insurance. See id. at 70; see also id. at 131-34. To qualify for unemployment
27 benefits, Plaintiff stated that he could work. Id. at 71.

1 Plaintiff has received social security retirement benefits since September 2009. Id. at 30.
2 Receiving social security retirement benefits precludes receipt of disability benefits during the
3 same time period. Id.

4 **i. Plaintiff's testimony as to his condition**

5 Plaintiff claims he is disabled and unable to work due to foot pain, neuropathy, inability to
6 stand on his feet, inability to concentrate to monitor students, and lack of patience towards
7 students. Id.

8 On December 3, 2009, Plaintiff submitted a Function Report to the Social Security
9 Administration. See id. at 184-91. Plaintiff stated he lives in a house with his family. Id. at 184.
10 He cares for his wife, dog and one chicken. Id. at 185. He stated that he is able to do household
11 chores such as cleaning and vacuuming, paying bills and grocery shopping. Id. 186-87. He stated
12 he could lift no more than ten pounds, and walk 0.125 miles or climb ten stairs before getting tired.
13 Id. at 189. Plaintiff also stated he could not stand for more than five minutes. Id. at 191.

14 At the ALJ hearing, Plaintiff testified that he has back problems, and pain in both his feet.
15 Id. at 75. He also testified that he had been taking hydrocodone for the pain, primarily at bed time.
16 Id. at 75-76.

17 **ii. Dr. Massey's reports**

18 Plaintiff testified that he has visited Dr. John H. Massey monthly since 2007. See id. at 34;
19 see also id. at 238-75. On November 19, 2007, Dr. Massey recommended that Plaintiff undergo an
20 EMG exam based on Plaintiff's complaints of bilateral foot pain. Id. at 273-75. The EMG was
21 performed by Dr. Tripeta Sachdev on January 3, 2008, and a report was sent back to Dr. Massey.
22 Id. at 265-70. The report stated that the EMG was indicative of mild to moderate mixed sensory
23 and motor neuropathy in both lower extremities, bilateral posterior tibial peroneal nerve latency,
24 chronic mild to moderate denervation, and lumbosacral radiculopathy in the L5-S1 nerve root. Id.
25 at 265.

26 On July 18, 2008, Plaintiff told Dr. Massey that he was experiencing increased pain in his
27 toes of both feet. Id. at 257. Plaintiff stated his overall functions had remained the same. Id. Dr.

1 Massey then diagnosed Plaintiff with lumbosacral disk degeneration and idiosyncratic progressive
2 polyneuropathy. Id. at 258.

3 On February 24, 2009, Plaintiff stated to Dr. Massey that he was experiencing worsening
4 pain in his lower extremities over the past few months. Id. at 249. A physical exam by Dr. Massey
5 on Plaintiff revealed normal reflexes in his knees and ankles, no evidence of extensor hallucis
6 longus weakness, sensation intact to light touch, and a negative seated straight leg raising test. Id.
7 Dr. Massey opined that the findings were consistent with Plaintiff’s previous diagnosis of L5
8 radiculopathy. Id.

9 On August 20, 2010, Dr. Massey completed a “Physical Residual Functional Capacity
10 Questionnaire.” See id. at 321-24. Dr. Massey stated that in his opinion, Plaintiff’s physical
11 condition made him incapable of even “low stress” jobs. Id. at 322. He stated that Plaintiff could
12 sit for twenty minutes, and stand for fifteen minutes at a time. Id. Dr. Massey further stated that
13 Plaintiff could only sit, stand or walk for less than two hours each day. Id. at 323. He further
14 stated that Plaintiff could lift and carry ten pounds occasionally. Id. Dr. Massey reported that the
15 symptoms and limitations had applied since November 19, 2007. Id. at 324.

16 **iii. Dr. Spivey’s report**

17 On January 22, 2010, Dr. Patricia Spivey, PsyD, performed a consultative psychological
18 evaluation on Plaintiff. See id. at 225-28. The consultation was scheduled due to Plaintiff’s report
19 that he suffered from depression and anxiety. Id. at 225. Dr. Spivey performed a number of
20 psychometric tests on Plaintiff. See id. at 226. Plaintiff’s Full Scale IQ test result was 80. Id. Dr.
21 Spivey stated that this IQ was significantly lower than would be expected for an individual of his
22 education and career. Id. at 227. Dr. Spivey further stated that on several tests Plaintiff appeared
23 to be giving a poor effort, and that she suspected malingering. Id. Dr. Spivey stated that Plaintiff’s
24 prognosis was very good and he had no disturbance in his normal functioning. Id. at 228.

25 **iv. Dr. Chung’s report**

26 On February 5, 2010, Plaintiff underwent a consultative internal medicine evaluation with
27 Dr. Jaehoon Chung. See id. at 278-81. After speaking with Plaintiff and performing a physical
28

1 examination, Dr. Chung stated that in his opinion Plaintiff had no limitations in sitting, lifting or
2 carrying. Id. at 81. Dr. Chung further stated that Plaintiff could stand or walk up to two hours a
3 day. Id.

4 **v. Dr. Soule's X-Ray report**

5 On March 5, 2010, Plaintiff underwent an X-ray of his lumbar spine by Dr. William Soule.
6 See id. at 284. The X-ray revealed osteophytes at levels L1-L2 and L3-L4, and no disk space
7 narrowing. Id. Dr. Soule noted that other than the osteophytes, the X-ray was "unremarkable." Id.

8 **vi. Dr. Kammen's report**

9 On March 19, 2010, Dr. P. Kammen reviewed the Plaintiff's file and completed a Physical
10 Residual Functional Capacity Assessment. See id. at 296-300. Dr. Kammen stated he believed
11 Plaintiff could occasionally lift fifty pounds and frequently lift twenty-five pounds. Id. at 297. The
12 report also stated that Dr. Kammen believed Plaintiff could stand, walk or sit for about six hours a
13 day. Id. These statements were consistent with assigning Plaintiff an RFC of "medium." See Id.
14 at 37.

15 **III. Legal Standard**

16 **A. Standard of Review**

17 Section 405(g) of title 42 of the United States Code grants a United States District Court the
18 authority to review an ALJ decision to deny disability benefits. However, the Court's jurisdiction
19 is limited. The Court may only set aside a denial of benefits if the ALJ's decision is not supported
20 by substantial evidence or the decision was based on legal error. 42 U.S.C. § 405(g); Matney v.
21 Sullivan, 981 F.2d 1016, 1019 (9th Cir. 1992).

22 "Substantial evidence is more than a mere scintilla, but is less than a preponderance."
23 Matney, 981 F.2d at 1019 (internal quotations omitted). The relevant evidence must be such "as a
24 reasonable mind might accept as adequate to support a conclusion." Richardson v. Perales, 402
25 U.S. 389, 401 (1971). To determine whether the ALJ's decision is supported by substantial
26 evidence, the Court "must review the administrative record as a whole," weighing the evidence
27 which both supports and detracts from the ALJ's conclusion. Reddick v. Chater, 157 F.3d 715,
28

1 720 (9th Cir. 1998). When the evidence could support more than one rational interpretation, the
2 Court must defer to the ALJ’s decision. Bayliss v. Barnhart, 427 F.3d 1211, 1214 n.1 (9th Cir.
3 2005).

4 **B. Standard for Determining Disability**

5 To qualify for disability insurance benefits under the Social Security Act, a Plaintiff must
6 establish the “inability to engage in any substantial gainful activity by reason of any medically
7 determinable physical or mental impairment which can be expected to result in death or which has
8 lasted or can be expected to last for a continuous period of not less than 12 months.” 42 U.S.C. §
9 423(d)(1)(A). Further, one can only be determined to be under a disability if “his physical or
10 mental impairment or impairments are of such severity that he is not only unable to do his previous
11 work but cannot, considering his age, education, and work experience, engage in any other kind of
12 substantial gainful work which exists in the national economy.” Id. § 423(d)(2)(A).

13 Disability is evaluated using a five-step sequential process. 20 C.F.R. § 404.1520(a)(4).
14 The initial burden rests with the claimant to prove a prima facie case of disability as to the first four
15 steps. See Thomas v. Barnhart, 278 F.3d 947, 955 (9th Cir. 2002). At the fifth step, “the burden
16 shifts to the Commissioner to establish that the claimant can perform a significant number of other
17 jobs in the national economy.” Id. “If it can be determined that a claimant is disabled or not
18 disabled at any point in the review, that finding is made, and the review is ended.” Matney, 981
19 F.2d at 1019. The five-step sequential evaluation process is as follows:

20 1) Whether the claimant is “doing substantial gainful activity.” If so, the claimant is
21 deemed not disabled. 20 C.F.R § 404.1520(a)(1)(4)(i), 404.1520(b).

22 2) Whether the claimant has a severe impairment or combination of impairments. If not,
23 the claimant is deemed not disabled. Id. § 404.1520(a)(1)(4)(ii), 404.1520(c).

24 3) Whether the impairment or combination of impairments meets or medically equals the
25 requirements of the Listing of Impairments. If so, the claimant is deemed disabled. Id. §
26 404.1520(a)(1)(4)(iii), 404.1520(d).

1 4) Whether the claimant’s RFC, despite his impairments, allows him to still perform his
2 past relevant work. If so, the claimant is deemed not disabled. Id. § 404.1520(a)(1)(4)(iv),
3 404.1520(e-f).

4 5) At the fifth step, the burden shifts to the Commissioner to show that, based on an
5 assessment of the claimant’s RFC, age, education and work experience, the claimant can make an
6 adjustment to work. If not, the claimant is deemed disabled. Id. § 404.1520(a)(1)(4)(v),
7 404.1520(g).

8 **IV. Discussion**

9 The ALJ made the following findings based on the five-step process: At step one, the ALJ
10 determined that Plaintiff had not engaged in substantial gainful activity since his alleged onset date.
11 AR at 32. At step two, the ALJ determined that Plaintiff had severe impairments of peripheral
12 neuropathy and lumbar degenerative disc disease. Id. At step three, the ALJ determined that
13 Plaintiff’s impairments did not meet or medically equal the requirements on the Listing of
14 Impairments. Id. at 33.

15 The ALJ then evaluated Plaintiff’s RFC. See 20 C.F.R. 404.1520(e). The ALJ found that
16 prior to October 1, 2009, Plaintiff had the RFC to perform the full range of light work as defined in
17 20 C.F.R § 303.1567(b). AR at 33. The ALJ further found that Plaintiff’s previous relevant work
18 as a Chemistry professor required light exertional level. Id. at 39. Thus, the ALJ found that prior
19 to October 1, 2009 Plaintiff was not disabled within the meaning of the Social Security Act, and
20 thus not qualified to receive disability insurance benefits. Id.

21 The ALJ further found that beginning on October 1, 2009, Plaintiff had the RFC to perform
22 the full range of sedentary work as defined in 20 C.F.R. § 303.1567(a). Id. at 38. As the Plaintiff’s
23 past relevant work required light exertional level, the ALJ found that Plaintiff was not able to
24 perform his past relevant work as of October 1, 2009. Id. at 39. The ALJ then determined that
25 Plaintiff was qualified as “disabled” as of October 1, 2009. Id. at 40.

1 Massey and Dr. Chung's reports as they were based primarily off of Plaintiff's complaints rather
2 than objective physical findings); see also Morgan v. Comm'r of Soc. Sec. Admin., 169 F.3d 595,
3 602 (9th Cir. 1999) ("A physician's opinion of disability premised to a large extent upon the
4 claimant's own accounts of his symptoms and limitations may be disregarded where those
5 complaints have been properly discounted." (internal quotations omitted)). Similarly, the ALJ
6 notably gave little weight to Dr. Kammen's March 19, 2010 physical RFC assessment which
7 assigned Plaintiff medium RFC, a higher physical capacity than the ALJ's ultimate determination.
8 See id. at 296-300.

9 Based off of the full record, the Court finds that the ALJ's decision to assign Plaintiff Light
10 RFC prior to October 1, 2009 was reasonable and supported by substantial evidence. Further, the
11 decision that Plaintiff's previous relevant work required light exertional level was supported by
12 substantial evidence. Thus, the Court finds that the ALJ's determination that Plaintiff was not
13 disabled prior to October 1, 2009 was reasonable and supported by substantial evidence.

14 **V. Conclusion**

15 Based on the foregoing, Plaintiff's Motion for Summary Judgment (Dkt. No. 15) is
16 DENIED and Defendant's Motion for Summary Judgment (Dkt. No. 17) is GRANTED.

17
18 **IT IS SO ORDERED**

19 Dated: August 13, 2014

20 
21 EDWARD J. DAVILA
22 United States District Judge
23
24
25
26
27
28