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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DAVID THOMAS COLE,	
	Plaintiff,
v.	
NANCY A. BERRYHILL, Acting Commissioner of Social Security,	
	Defendant.

Case No.: 3:16-cv-02621-H-JMA

ORDER:

**(1) DENYING PLAINTIFF’S
MOTION FOR SUMMARY
JUDGMENT; and**

[Doc. No. 11]

**(2) GRANTING DEFENDANT’S
CROSS-MOTION FOR
SUMMARY JUDGMENT**

[Doc. No. 18]

On October 21, 2016, David Thomas Cole (“Plaintiff”) filed a complaint against Defendant Nancy A. Berryhill, Acting Commissioner of Social Security (“Defendant”), seeking judicial review of an administrative denial of disability benefits under the Social Security Act. (Doc. No. 1.) On February 7, 2017, Defendant filed an answer to Plaintiff’s complaint and the administrative record. (Doc. Nos. 6, 7.) On March 16, 2017, Plaintiff filed a motion for summary judgment, requesting that the Court reverse the Commissioner’s final decision and order the payment of benefits, or alternatively,

1 remand the case for further administrative proceedings. (Doc. No. 11.) On June 15,
2 2017, Defendant filed a cross-motion for summary judgment and a response in opposition
3 to Plaintiff's motion, requesting that the Court affirm the Commissioner's final decision.
4 (Doc. Nos. 18, 19.) For the reasons below, the Court denies Plaintiff's motion for
5 summary judgment, grants Defendant's cross-motion for summary judgment, and affirms
6 the Commissioner's final decision.

7 **BACKGROUND**

8 On August 23, 2012, Plaintiff applied for disability insurance benefits, claiming a
9 disability onset date of May 15, 2011. (AR68-69.) The Social Security Administration
10 denied Plaintiff's application for benefits initially on January 9, 2013, and again upon
11 reconsideration on June 7, 2013. (AR77, 89.) On July 5, 2013, Plaintiff requested a
12 hearing before an Administrative Law Judge ("ALJ"). (AR107-08.)

13 On September 30, 2014, an ALJ held a hearing where Plaintiff appeared with
14 counsel and testified. (AR40-58.) At the hearing, the ALJ also heard testimony from a
15 vocational expert. (AR58-65.) In a decision dated April 3, 2015, the ALJ determined
16 that Plaintiff had the following severe impairments: lumbar spinal stenosis with
17 radiculopathy, disc herniation, degenerative disc disease, disc protrusion of the cervical
18 spine, cervical central canal narrowing with radiculopathy, left hand carpal tunnel
19 syndrome, obesity, and diabetes mellitus with neuropathy; but concluded that Plaintiff
20 did not have an impairment or combination of impairments that met or equaled a listed
21 impairment. (AR23-25.) The ALJ determined that Plaintiff had the residual functional
22 capacity ("RFC") to perform light work, with the further limitations that the claimant
23 may engage in postural movement occasionally, and may use his hands frequently for
24 fingering, handling, feeling and grasping. (AR25.) Based on this RFC assessment and
25 the testimony from the vocational expert, the ALJ determined that Plaintiff could perform
26 past relevant work as a front desk clerk and a property manager. (AR30.) As a result of
27 these findings, the ALJ determined that Plaintiff was not disabled from May 15, 2011 the
28 alleged onset date, through December 31, 2014, the date last insured. (AR31.)

1 On May 27, 2015, Plaintiff requested review of the ALJ’s decision by the Appeals
2 Council. (AR14, 15.) On August 31, 2016, the Appeals Council denied Plaintiff’s
3 request for review, rendering the ALJ’s decision final. (AR1-3.)

4 DISCUSSION

5 **I. The Legal Standard for Determining Disability**

6 “A claimant is disabled under Title II of the Social Security Act if he is unable to
7 ‘engage in any substantial gainful activity by reason of any medically determinable
8 physical or mental impairment which can be expected to result in death or ... can be
9 expected to last for a continuous period of not less than 12 months.’” Parra v. Astrue,
10 481 F.3d 742, 746 (9th Cir. 2007) (quoting 42 U.S.C. § 423(d)(12)(A)). “To determine
11 whether a claimant meets this definition, the ALJ conducts a five-step sequential
12 evaluation.” Id.; see C.F.R. §§ 404.1520, 416.920. The Ninth Circuit has summarized
13 this process as follows:

14
15 The burden of proof is on the claimant as to steps one to four. As to step five, the
16 burden shifts to the Commissioner. If a claimant is found to be “disabled” or “not
17 disabled” at any step in the sequence, there is no need to consider subsequent steps.
The five steps are:

18 Step 1. Is the claimant presently working in a substantially gainful activity? If so,
19 then the claimant is “not disabled” within the meaning of the Social Security Act
20 and is not entitled to disability insurance benefits. If the claimant is not working in
21 a substantially gainful activity, then the claimant's case cannot be resolved at step
one and the evaluation proceeds to step two. See 20 C.F.R. § 404.1520(b).

22 Step 2. Is the claimant's impairment severe? If not, then the claimant is “not
23 disabled” and is not entitled to disability insurance benefits. If the claimant's
24 impairment is severe, then the claimant's case cannot be resolved at step two and
the evaluation proceeds to step three. See 20 C.F.R. § 404.1520(c).

25 Step 3. Does the impairment “meet or equal” one of a list of specific impairments
26 described in the regulations? If so, the claimant is “disabled” and therefore entitled
27 to disability insurance benefits. If the claimant's impairment neither meets nor
28 equals one of the impairments listed in the regulations, then the claimant's case

1 cannot be resolved at step three and the evaluation proceeds to step four. See 20
2 C.F.R. § 404.1520(d).

3 Step 4. Is the claimant able to do any work that he or she has done in the past? If
4 so, then the claimant is “not disabled” and is not entitled to disability insurance
5 benefits. If the claimant cannot do any work he or she did in the past, then the
6 claimant's case cannot be resolved at step four and the evaluation proceeds to the
7 fifth and final step. See 20 C.F.R. § 404.1520(e).

8 Step 5. Is the claimant able to do any other work? If not, then the claimant is
9 “disabled” and therefore entitled to disability insurance benefits. See 20 C.F.R. §
10 404.1520(f)(1). If the claimant is able to do other work, then the Commissioner
11 must establish that there are a significant number of jobs in the national economy
12 that claimant can do. There are two ways for the Commissioner to meet the burden
13 of showing that there is other work in “significant numbers” in the national
14 economy that claimant can do: (1) by the testimony of a vocational expert, or (2)
15 by reference to the Medical–Vocational Guidelines at 20 C.F.R. pt. 404, subpt. P,
16 app. 2. If the Commissioner meets this burden, the claimant is “not disabled” and
17 therefore not entitled to disability insurance benefits. See 20 C.F.R. §§
18 404.1520(f), 404.1562. If the Commissioner cannot meet this burden, then the
19 claimant is “disabled” and therefore entitled to disability benefits.

20 Tackett v. Apfel, 180 F.3d 1094, 1098-99 (9th Cir. 1999) (citation omitted); see also 20
21 C.F.R. §§ 404.1520, 416.920. As part of step four, the ALJ must determine the
22 claimant’s RFC, i.e., the most a claimant can do despite her limitations. See 20 C.F.R. §
23 404.1545; Cooper v. Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989). “In determining
24 a claimant’s RFC, an ALJ must consider all relevant evidence in the record, including,
25 *inter alia*, medical records, lay evidence, and the effects of symptoms, including pain,
26 that are reasonably attributed to a medically determinable impairment.” Robbins v.
27 Social Sec. Admin., 466 F.3d 880, 883 (9th Cir. 2006) (internal quotation marks omitted).

28 **II. Standards of Review for Social Security Determinations**

Unsuccessful applicants for social security disability benefits may seek judicial
review of a Commissioner’s final decision in a federal district court. See 42 U.S.C. §
405(g). “As with other agency decisions, federal court review of social security

1 determinations is limited.” Treichler v. Comm’r of Soc. Sec. Admin., 775 F.3d 1090,
2 1098 (9th Cir. 2014).

3 “An ALJ’s disability determination should be upheld unless it contains legal error
4 or is not supported by substantial evidence.” Garrison v. Colvin, 759 F.3d 995, 1009 (9th
5 Cir. 2014). “Substantial evidence means more than a mere scintilla but less than a
6 preponderance; it is such relevant evidence as a reasonable mind might accept as
7 adequate to support a conclusion.” Bray v. Comm’r of Soc. Sec. Admin., 554 F.3d
8 1219, 1222 (9th Cir. 2009) (quoting Andrews v. Shalala, 53 F.3d 1035, 1039 (9th Cir.
9 1995)). The district court must consider the record as a whole, weighing both the
10 evidence that supports and the evidence that detracts from the Commissioner’s
11 conclusions. Garrison, 759 F.3d at 1009. “Where the evidence as a whole can support
12 either a grant or a denial, [a court] may not substitute [its] judgment for the ALJ’s.”
13 Bray, 554 F.3d at 1222 (quoting Massachi v. Astrue, 486 F.3d 1149, 1152 (9th Cir.
14 2007)). “The ALJ is responsible for determining credibility, resolving conflicts in
15 medical testimony, and for resolving ambiguities.” Garrison, 759 F.3d at 1010 (quoting
16 Shalala, 53 F.3d at 1039).

17 In addition, even when the ALJ commits legal error, a reviewing court will uphold
18 the decision where that error is harmless. Treichler, 775 F.3d at 1099; see also Molina v.
19 Astrue, 674 F.3d 1104, 1115 (9th Cir. 2012) (“We have long recognized that harmless
20 error principles apply in the Social Security Act context.”). “[A]n ALJ’s error is
21 harmless where it is ‘inconsequential to the ultimate nondisability determination.’”
22 Molina, 674 F.3d at 1115. “[T]he burden of showing that an error is harmful normally
23 falls upon the party attacking the agency’s determination.” Id. at 1111 (quoting Shinseki
24 v. Sanders, 556 U.S. 396, 409 (2009)).

25 **III. Analysis**

26 In denying Plaintiff’s application for disability benefits, the ALJ’s analysis
27 proceeded through four of the five steps. At step one, the ALJ determined that as a
28 threshold matter Plaintiff was not working, and thus Plaintiff was not engaged in

1 substantial gainful activity. (AR22.) At step two, the ALJ found that Plaintiff had eight
2 severe impairments: lumbar spinal stenosis with radiculopathy, disc herniation,
3 degenerative disc disease, disc protrusion of the cervical spine, cervical central canal
4 narrowing with radiculopathy, left hand carpal tunnel syndrome, obesity, and diabetes
5 mellitus with neuropathy. (AR23.) At step three, the ALJ found that none of Plaintiff's
6 impairments, independently or in combination, met one of the listed impairments.
7 (AR25.) Next, in order to complete step four, the ALJ determined that Plaintiff's RFC
8 allowed him to perform light work, with occasional postural movement, and frequent use
9 of hands for fingering, handling, feeling and grasping. (Id.) The ALJ based his RFC
10 determination on Plaintiff's symptoms to the extent the symptoms were consistent with
11 the objective medical record. (Id.) Using this RFC, the ALJ concluded that Plaintiff was
12 capable of performing past relevant work as a front desk clerk and property manager.
13 (AR30.) In so finding, the ALJ rejected Plaintiff's alleged disability.

14 Plaintiff moves for summary judgment on three separate grounds. Specifically,
15 Plaintiff argues: (1) that the ALJ failed to provide a sufficient basis for discrediting Dr.
16 Thomas Golden's medical opinions, (2) that the ALJ improperly found Plaintiff's mental
17 impairments to be not severe, and (3) that the ALJ improperly made an adverse
18 credibility determination against Plaintiff. (Doc. No. 11-1 at 2.) The Court addresses
19 each of these arguments in turn below.

20 A. Dr. Golden's Opinion

21 Plaintiff argues that the ALJ improperly discredited the medical opinion of Dr.
22 Golden concerning Plaintiff's disability, and various limitations on lifting weight,
23 standing, sitting, walking, stooping, crouching, reaching, pushing, handling, fingering,
24 and feeling. (Doc. No. 11-1 at 6-12.) Defendant disagrees, arguing that the ALJ properly
25 discredited Dr. Golden's opinion because it was not supported by the record and was
26 contradicted by the findings of Dr. Do and Dr. Lee. (Doc. No. 17-1 at 6-15.) The Court
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1 agrees with Defendant; the ALJ properly discredited Dr. Golden’s opinion by providing
2 specific and legitimate reasons for so doing.¹

3 Whether an ALJ properly discredited a treating physician’s opinion is a question of
4 law. Dominguez v. Colvin, 808 F.3d 403, 405 (9th Cir. 2015) (“The ALJ made a legal
5 error when it rejected the opinions of [claimant’s] treating physician without giving
6 sufficient reasons”). The Ninth Circuit distinguishes among three types of physicians:
7 “(1) those who treat the claimant (treating physicians); (2) those who examine but do not
8 treat the claimant (examining physicians); and (3) those who neither examine nor treat
9 the claimant (nonexamining physicians).” Lester v. Chater, 81 F.3d 821, 830 (9th Cir.
10 1995), as amended (Apr. 9, 1996); see also 20 C.F.R. § 404.1502 (defining treating,
11 examining, and nonexamining sources). Generally, the opinions of treating physicians
12 are given more weight than the opinions of examining physicians, which are in turn given
13 more weight than the opinions of nonexamining physicians. See Benton ex rel. Benton v.
14 Barnhart, 331 F.3d 1030, 1038 (9th Cir. 2003). Treating physicians’ opinions, in
15 particular, are given the “greatest weight”, and the ALJ must justify a decision to
16 disregard them. Gardner v. Berryhill, 856 F.3d 652, 657 (9th Cir. 2017).

17 If a treating physician’s opinion is not contradicted by another doctor, the ALJ may
18 only disregard the opinion if he justifies that decision with “clear and convincing reasons
19 supported by substantial evidence in the record.” Orn v. Astrue, 495 F.3d 625, 632 (9th
20 Cir. 2007) (quoting Lester, 81 F.3d at 830). Even if a treating physician’s opinion is
21 contradicted by another doctor, the ALJ may still only disregard it by providing ““specific
22 and legitimate reasons’ supported by substantial evidence in the record.” Id. (quoting
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24 ¹ In his brief, Plaintiff states that the ALJ was required to set out clear and convincing reasons for
25 rejecting the opinion of Dr. Golden. (Doc. No. 11-1 at 2.) This standard is incorrect. Because Dr.
26 Golden’s opinion was contradicted by other physicians, Dr. Do and Dr. Lee, the ALJ need only provide
27 “specific and legitimate” reasons supported by substantial evidence to discredit Dr. Golden. See
28 Morgan v. Commissioner of Social Sec. Admin, 169 F.3d 595, 600 (9th Cir. 1999) (opinions of non-
examining physicians can be used to discredit treating physicians when used in conjunction with
evidence from the medical record).

1 Murray v. Heckler, 722 F.2d 499, 502 (9th Cir. 1983)). “The ALJ may meet his burden
2 by setting out a detailed and thorough summary of the facts and conflicting clinical
3 evidence, stating his interpretation thereof, and making findings.” Id. (quoting
4 Magallanes v. Bowen, 881 F.2d 747, 751 (9th Cir. 1989)). Furthermore, an “ALJ may
5 discredit treating physicians’ opinions that are conclusory, brief, and unsupported by the
6 record as a whole, or by objective medical findings.” Batson v. Comm’r of Soc. Sec.
7 Admin., 359 F.3d 1190, 1195 (9th Cir. 2004).

8 Dr. Golden, Plaintiff’s treating physician, opined that because of Plaintiff’s leg and
9 back problems, a finding of disability was appropriate once Plaintiff’s unemployment
10 benefits ran out. (AR270.) Dr. Golden also indicated that Plaintiff should be limited in
11 various types of physical work, like stooping, crouching, or climbing. (AR440.)

12 In his opinion, the ALJ discredited Dr. Golden’s opinions because they were
13 inconsistent with the medical evidence in the record and with the other medical opinions.
14 (AR29.) Specifically, the ALJ looked to Plaintiff’s daily activities, his course of
15 treatment, his evaluations, and the opinions of state agency medical consultants Dr. Do
16 and Dr. Lee in determining whether Dr. Golden’s opinion was reliable. (AR26-29.) Dr.
17 Do opined Plaintiff could crawl, crouch, kneel, stoop, and climb ramps and stairs
18 frequently, could engage in frequent handling and fingering, and should climb ladders,
19 ropes, and scaffolds only occasionally. (Id.; see also AR73-75.) Dr. Lee reiterated these
20 findings, and only diverged in that he believed Plaintiff should never climb ladders, ropes
21 and scaffolds. (AR85-87.) The ALJ found these opinions consistent with his RFC
22 determination, but not consistent with Dr. Golden’s opinion. (AR29.)

23 The ALJ’s reasons for discrediting Dr. Golden are sufficient. Because Dr.
24 Golden’s opinion was contradicted by two other doctors, Dr. Do and Dr. Lee, the ALJ
25 need only provide specific and legitimate reasons for rejecting it. Reddick v. Charter,
26 157 F.3d 715, 725 (9th Cir. 1998). And the ALJ can do this by “setting out a detailed and
27 thorough summary of the facts and conflicting clinical evidence, stating his interpretation
28 thereof, and making findings.” Orn, 495 F.2d at 632. That is what the ALJ did here.

1 The ALJ engaged in a thorough examination of the medical evidence, the record,
2 Plaintiff's course of treatment, and Plaintiff's daily activities. (AR26-29.) He then
3 identified the conflicting medical opinions of Dr. Golden and Dr. Do and Dr. Lee, and
4 afforded greater weight to the opinions of Dr. Do and Dr. Lee because they were
5 consistent with the overall record, which showed relatively conservative treatment for
6 Plaintiff's back impairments and no significant limitations in his range of motions.
7 (AR29.) Moreover, the ALJ added that the opinions of Dr. Do and Dr. Lee also mirror
8 the limitations demonstrated in the claimant's daily activities, in which he lives alone,
9 prepares simple meals, shops in stores, and performs household chores. (Id.) As such,
10 the ALJ's ultimate determination as to the conflicting medical opinions was proper. See
11 Garrison, 759 F.3d at 1010 ("The ALJ is responsible for determining credibility [and]
12 resolving conflicts in medical testimony"). Consequently, the Court rejects Plaintiff's
13 argument that the ALJ improperly discredited Dr. Golden's medical opinions.

14 B. Mental Impairment

15 Plaintiff argues that the ALJ improperly found that Plaintiff does not have a severe
16 mental impairment despite Plaintiff's depression and alcohol abuse. (Doc. No. 11-1 at
17 16-17.) Defendant disagrees, arguing that substantial evidence supported the ALJ's
18 finding that Plaintiff did not have a severe mental impairment. (Doc. No. 17-1 at 6-15.)
19 The Court agrees with Defendant; the ALJ properly determined that Plaintiff's depression
20 and history of alcohol abuse were not severe impairments.

21 If a claimant makes a colorable claim of mental impairment, the ALJ is required to
22 apply a special technique to rate the degree of functional limitations resulting from the
23 mental impairments in four different areas: "activities of daily living; social functioning;
24 concentration, persistence, or pace; and episodes of decompensation." Hoopai v. Astrue,
25 499 F.3d 1071, 1077 (9th Cir. 2007); see also 20 C.F.R. § 404.1520a(c)(3). Legal error
26 occurs when the ALJ neglects to document his application of the technique or fails to
27 include a specific finding as to the degree of limitation in any of the four functional areas.
28 Keyser v. Commissioner Social Sec. Admin., 648 F.3d 721, 726 (9th Cir. 2011). After

1 rating the degree of limitation in each functional area, the ALJ will determine whether the
2 claimant has a severe mental impairment. Averbach v. Astrue, 731 F. Supp. 2d 977, 987
3 n.4 (C.D. Cal 2010). After the ALJ determines whether the mental impairment is severe,
4 he moves onto the normal RFC determination. Cooper, 880 F.2d at 1155 n.5.

5 In evaluating Plaintiff's claim that his depression and abuse of alcohol constituted
6 severe mental impairments, the ALJ considered the four broad functional areas set out in
7 20 C.F.R. § 404.1520a(c)(3). (AR23.) First, he found that Plaintiff had mild limitations
8 when it came to activities of daily living, noting that Plaintiff engaged in regular
9 household chores and enjoyed going to movies and softball games. (Id.) Next, he found
10 that Plaintiff had no social functioning limitations, as Plaintiff regularly played card and
11 board games, is able to go to stores and movie theaters, and frequently interacts with his
12 family members. (AR24.) Third, the ALJ found that Plaintiff had no limitations in
13 concentration, persistence, or pace. (Id.) The ALJ pointed to the lack of psychometric
14 tests and mental status evaluation indicating limitations in concentration, persistence, or
15 pace, and also noted that Plaintiff regularly engages in activities like preparing meals,
16 shopping in stores, managing personal finances, and driving, which indicate that he
17 finishes what he starts, can follow written and spoken instructions, and has no problems
18 paying attention. (Id.) Lastly, the ALJ found no episodes of decompensation that have
19 been of extended duration. (Id.) Because Plaintiff's mental impairments caused no more
20 than mild limitations and no episodes of decompensation, the ALJ determined that
21 Plaintiff's mental impairments were non-severe. (Id.; see also 20 C.F.R.
22 404.1520a(d)(1)).

23 The ALJ's reasons for determining that Plaintiff's mental impairments were non-
24 severe are sufficient and supported by the record. Because Plaintiff made a colorable
25 claim of mental impairment, the ALJ must document his findings "as to the four
26 functional areas, as required by the plain language of 20 C.F.R. § 404.1520a(e)." Keyser,
27 648 F.3d at 726. This is precisely what the ALJ did here. Relying on evidence from the
28 medical record, Plaintiff's testimony, and the medical opinions of state agency

1 psychological consultants Dr. Hurwitz and Dr. Lee, the ALJ stated his findings in each
2 functional area: daily living, social functioning, concentration, persistence or pace, and
3 episodes of decompensation. (AR23-24.) The ALJ gave his rating for each functional
4 limitation, and stated his reasons and included support in the record. (Id.; see also 20
5 C.F.R. § 404.1520a(c)(4) (“When we rate your degree of limitation in these areas, we
6 will use the following five-point scale: None, mild, moderate, marked, and extreme.”)
7 The ALJ thus met the requirements of 20 C.F.R. § 404.1520a “by rating and assessing
8 Plaintiff’s limitations in each of these four functional areas.” Hoopai, 499 F.3d at 1078.

9 In the alternative, Plaintiff argues that even if the ALJ did properly find his mental
10 impairments not severe, the ALJ still did not adequately assess Plaintiff’s mental
11 limitations when determining Plaintiff’s RFC. (Doc. No. 11-1 at 23-25.) The Court does
12 not find this argument persuasive. When determining RFC, the ALJ is required to
13 “consider all of [Plaintiff’s] medically determinable impairments of which [he is] aware,
14 including medically determinable impairments that are not “severe”. 20 C.F.R. §
15 404.1545. Here, the ALJ reviewed the medical record, relied on physician opinions, and
16 properly found that Plaintiff’s mental impairments only posed “mild” or “no” limitations.
17 (AR23-24.) Thus, the ALJ has met his requirement under 20 C.F.R. § 404.1545.

18 C. Credibility Determination

19 Plaintiff argues that the ALJ improperly discredited Plaintiff’s testimony
20 concerning the severity of his symptoms. (Doc. No. 11-1 at 26.) Specifically, Plaintiff
21 argues that the ALJ disregarded Plaintiff’s testimony concerning his restricted abilities in
22 lifting, squatting, bending, standing, reaching, walking, sitting, kneeling, stair-climbing,
23 memory, using hands, and getting along with others. (Id.; see also AR215.) Defendant
24 maintains that ALJ properly considered the evidence available in the medical record, and
25 made a credibility determination that was supported by substantial evidence. (AR19-23.)
26 The Court agrees with Defendant; the ALJ properly made an adverse credibility
27 determination against Plaintiff by permissibly relying on evidence from the record,
28 medical opinions, and Plaintiff’s daily activities.

1 “To determine whether a claimant's testimony regarding subjective pain or
2 symptoms is credible, an ALJ must engage in a two-step analysis.” Lingenfelter v.
3 Astrue, 504 F.3d 1028, 1035-1036 (9th Cir. 2007). “First, the ALJ must determine
4 whether the claimant has presented objective medical evidence of an underlying
5 impairment ““which could reasonably be expected to produce the pain or other symptoms
6 alleged.” Id. (citing Bunnell v. Sullivan, 947 F.2d 341, 344 (9th Cir.1991) (en banc)
7 (internal quotation marks omitted)). This test requires that the causal relationship
8 between impairment and symptoms be “a reasonable inference, not a medically proven
9 phenomenon.” Smolen v. Chater, 80 F.3d 1273, 1282 (9th Cir. 1996).

10 If Plaintiff meets this first test, “the ALJ can reject the claimant's testimony about
11 the severity of her symptoms only by offering specific, clear and convincing reasons for
12 doing so.” Lingenfelter, 504 F.3d at 1036. “General findings are insufficient; rather, the
13 ALJ must identify what testimony is not credible and what evidence undermines the
14 claimant's complaints.” Ghamin v. Colvin, 763 F.3d 1154, 1163 (9th Cir. 2014) (citing
15 Lester, 81 F.3d at 834). When assessing credibility, the ALJ may consider a range of
16 factors including “(1) ordinary techniques of credibility evaluation, such as the claimant's
17 reputation for lying, prior inconsistent statements concerning the symptoms, and other
18 testimony by the claimant that appears less than candid; (2) unexplained or inadequately
19 explained failure to seek treatment or to follow a prescribed course of treatment; and (3)
20 the claimant's daily activities.” Ghamin, 763 F.3d at 1163 (citing Smolen, 80 F.3d at
21 1284).

22 In his opinion, the ALJ found that Plaintiff’s medically determinable impairments
23 could reasonably be expected to cause his alleged symptoms. (AR26.) He then relied
24 upon Plaintiff’s course of treatment, daily activities, and medical record in finding that
25 Plaintiff’s statements about his symptoms were not entirely credible. (AR26-27.) For
26 example, the ALJ observed that Plaintiff’s treatment measures for his back predated his
27 disability by one year, and that during that time, he was able to perform work as
28 substantial gainful activity despite his back impairments. (AR27.) In addition, the ALJ

1 pointed to Plaintiff's lack of treatment for his conditions between January 2013 and April
2 2014, and then his sparse and intermittent treatment thereafter, as being inconsistent with
3 the alleged severity of Plaintiff's impairments.² (AR27.) The ALJ also observed that
4 Plaintiff's reported daily activities – such as preparing simple meals, shopping in stores,
5 performing household chores, going out to movies and softball games, and overseeing
6 house repairs and maintenance – do not support the level of his alleged physical
7 limitations. (AR27.) Further, the ALJ reviewed Plaintiff's medical record and made
8 findings that suggested Plaintiff's physical limitations were not as severe as alleged, such
9 as significant improvement in Plaintiff's back pain, full strength in his hands, and no
10 evidence of hand numbness, despite this being alleged by Plaintiff. (AR27-28.)

11 The ALJ's reasons for his adverse credibility determination are sufficient. In order
12 to meet his burden, the ALJ must give "specific, clear and convincing reasons" for
13 finding Plaintiff's testimony not credible. Lingenfelter, 504 F.3d at 1036. This must be
14 done by noting which parts of the testimony were not credible, and which parts of the
15 record undermine them. Ghamin, 763 F.3d at 1163. This is what the ALJ did here. He
16 recorded the relevant parts of Plaintiff's testimony, thoroughly reviewed the record, and
17 documented which parts of the record undermined Plaintiff's statements. (AR26-28.)
18 The ALJ did not make "general findings," 763 F.3d at 1163, but rather specifically
19 showed why he came to his determination by making findings based on Plaintiff's course
20 of treatment, Plaintiff's daily activities, and the medical record. (AR26-28.) Thus, the
21 ALJ has met his requirement for providing specific, clear and convincing reasons.

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25 ² Plaintiff argues that the reason he did not receive treatment between January 2013 and April
26 2014 was because he could not afford insurance, and that the ALJ erred in ignoring Plaintiff's lack of
27 insurance when determining Plaintiff's credibility. (Doc. 11-1 at 29.) The Court does not find this
28 persuasive. The ALJ did not solely rely on Plaintiff's lack of treatment during this period in making his
adverse credibility finding; rather, he relied on several other reasons, including Plaintiff's intermittent
and sparse treatment even after obtaining insurance, Plaintiff's daily activities, and his examination
notes. (AR27.) Thus, the Court does not find error with this part of the ALJ's analysis.

1 **CONCLUSION**

2 The Court concludes that the ALJ's decision was supported by substantial evidence
3 and was based on proper legal standards. Therefore, the ALJ's disability determination
4 must be upheld. Accordingly, the Court grants the Defendant's cross-motion for
5 summary judgment and denies the Plaintiff's motion for summary judgment.

6 **IT IS SO ORDERED**

7 DATED: July 17, 2017

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9 Hon. Marilyn L. Huff
United States District Judge

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