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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 FRANK W.,

12 Plaintiff,

13 v.

14 ANDREW M. SAUL, Commissioner of
15 Social Security,

16 Defendant.

Case No.: 20cv1439-KSC

**ORDER DENYING PLAINTIFF'S
MERITS BRIEF [Doc. No. 14] AND
GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT [Doc. No. 17]**

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18 On July 27, 2020, plaintiff Frank W. commenced an action pursuant to Title 42,
19 United States Code, Section 405(g), against Andrew M. Saul, the Commissioner of Social
20 Security, seeking review of a final adverse decision of the Commissioner. [Doc. No. 1.]
21 Currently before the Court are plaintiff's Merits Brief seeking a reversal with an award of
22 benefits or a remand for further proceedings [Doc. No. 14] and defendant's Cross-Motion
23 for Summary Judgment seeking an order affirming the Commissioner's denial of benefits
24 [Doc. No. 17]. For the reasons outlined more fully below, the Court finds that plaintiff's
25 Merits Brief must be DENIED [Doc. No. 14], and defendant's Motion for Summary
26 Judgment must be GRANTED [Doc. No. 17].

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1 **I. Procedural History.**

2 Plaintiff filed an application for disability insurance benefits on November 30,
3 2017, claiming he had been unable to work since July 1, 2017. [Doc. No. 13-5, at pp. 2-
4 3.] On December 4, 2017, plaintiff also applied for supplemental security income
5 benefits. [Doc. No. 13-5, at pp. 4-9.] Plaintiff's application for benefits was denied on
6 January 8, 2018, because it was determined that his condition was not severe enough to
7 keep him from working. [Doc. No. 13-4, at p. 8.] Plaintiff then submitted a request for
8 reconsideration on January 23, 2018, which was denied on March 7, 2018. [Doc. No. 13-
9 4, at pp. 14-16.]

10 On March 19, 2018, plaintiff requested a hearing, and a hearing was then held
11 before an ALJ on April 25, 2019. [Doc. No. 13-4, at pp. 22, 41; Doc. No. 13-2, at p. 40.]
12 In a written decision dated June 20, 2019, the ALJ concluded plaintiff is not eligible for
13 benefits, because he is not disabled. [Doc. No. 13-2, at pp. 26-35.] Plaintiff then
14 requested review of the ALJ's decision by the Appeals Council, but the Appeals Council
15 concluded in a letter dated May 29, 2020, that there was no basis for changing the ALJ's
16 decision. [Doc. No. 13-2, at pp. 2-4.] Therefore, the ALJ's denial became the final
17 decision of the Commissioner.

18 On July 27, 2020, plaintiff filed his Complaint in this action seeking review of the
19 ALJ's decision. [Doc. No. 1.] Plaintiff then filed a Consent to jurisdiction for all
20 purposes by the undersigned Magistrate Judge. [Doc. No. 9.]

21 **II. Summary of the ALJ's Findings.**

22 The ALJ followed the Commissioner's five-step sequential evaluation process for
23 determining whether an applicant is disabled under this standard. 20 C.F.R.
24 § 404.1520(a). At steps one and two, the ALJ concluded that plaintiff has not engaged in
25 substantial gainful activity since July 1, 2017, and he has the severe impairments of
26 Ehlers-Danlos syndrome; right shoulder instability status post-arthroscopic surgery;
27 migraines; and optic neuritis of the right eye. [Doc. 13-2, at p. 28.] At step three, the

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1 ALJ concluded that plaintiff's impairments do not meet or equal any of the relevant
2 listings in the SSA's Listing of Impairments. [Doc. No. 13-2, at p. 29.]

3 At step four, the ALJ must determine the claimant's residual functional capacity
4 ("RFP") to work based on all impairments, including impairments that are not severe. 20
5 C.F.R. § 404.1520(e), § 404.1545(a)(2). RFP is "the most [an applicant] can still do
6 despite [his] limitations." 20 C.F.R. § 404.1545(a)(1). As part of this assessment, the ALJ
7 must determine whether the applicant retains the RFP to perform his or her past relevant
8 work. 20 C.F.R. § 404.1520(a)(4)(iv).

9 After considering "the entire record," the ALJ concluded plaintiff is unable to
10 perform his past relevant work as a food service worker or cafeteria cook but does have
11 the RFP to perform "sedentary work" with certain additional restrictions. [Doc. No. 13-
12 2, at pp. 29, 33.] "Sedentary work involves lifting no more than 10 pounds at a time and
13 occasionally lifting or carrying articles like docket files, ledgers, and small tools.

14 Although a sedentary job is defined as one which involves sitting, a certain amount of
15 walking and standing is often necessary in carrying out job duties. Jobs are sedentary if
16 walking and standing are required occasionally, and other sedentary criteria are met."
17 20 C.F.R. § 404.1567(a); 416.967(a). The additional limitations or restrictions cited by
18 the ALJ are as follows: occasionally climb ramps and stairs but never climb ladders,
19 ropes, or scaffolds; occasionally balance, stoop, kneel, crouch or crawl; frequently reach
20 but overhead reaching is limited to occasional; and avoid more than moderate noise and
21 lighting brighter than daylight or lighting typically encountered in a business or factory
22 environment. In addition, the ALJ stated plaintiff can only do work that can be
23 performed with reduced peripheral vision in the right eye. [Doc. No. 13-2, at p. 29.]

24 Because plaintiff's ability to perform the full range of sedentary work is impeded
25 by additional limitations or restrictions, the ALJ made a finding at step five of the
26 disability analysis. If the applicant cannot perform past relevant work, the ALJ at step
27 five must consider the RFP assessment, along with the applicant's age, education, and
28 work experience, to determine whether the applicant could "make an adjustment to other

1 work" that is available in significant numbers in the national economy. 20 C.F.R.
 2 § 404.1520(a)(4)(v); 42 U.S.C. § 1382c(a)(3)(B). While the applicant carries the burden
 3 of proving eligibility at steps one through four, the burden at step five rests on the
 4 agency. *Celaya v. Halter*, 332 F.3d 1177, 1180 (9th Cir. 2003). Considering his age,
 5 education, work experience, and RFP, and based on the testimony of a vocational expert,
 6 the ALJ concluded at step five that plaintiff can perform other jobs that exist in
 7 significant numbers in the national economy. [Doc. No. 13-2, at pp. 34-35.] Accordingly,
 8 the ALJ made a finding that plaintiff is not disabled. [Doc. No. 13-2, at p. 35.]

9 **III. Standards of Review – Final Decision of the Commissioner.**

10 The final decision of the Commissioner must be affirmed if it is supported by
 11 substantial evidence and if the Commissioner has applied the correct legal standards.
 12 *Batson v. Comm'r of the Social Security Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004).
 13 Under the substantial evidence standard, the Commissioner's findings are upheld if
 14 supported by inferences reasonably drawn from the record. *Id.* If there is evidence in the
 15 record to support more than one rational interpretation, the District Court must defer to
 16 the Commissioner's decision. *Id.* "Substantial evidence means such relevant evidence as a
 17 reasonable mind might accept as adequate to support a conclusion." *Osenbrock v. Apfel*,
 18 240 F.3d 1157, 1162 (9th Cir. 2001). "In determining whether the Commissioner's
 19 findings are supported by substantial evidence, we must consider the evidence as a
 20 whole, weighing both the evidence that supports and the evidence that detracts from the
 21 Commissioner's conclusion." *Smolen v. Chater*, 80 F.3d 1273, 1279 (9th Cir. 1996).

22 **IV. Discussion.**

23 **A. The ALJ's Limitation on Exposure to Bright Lighting.**

24 The RFC section of the ALJ's decision noted that "a treatment record on March 1,
 25 2019, by Dianne Kim, M.D., an ophthalmologist at Kaiser, reported the claimant noticed
 26 blurry vision and loss of peripheral vision in his right eye about two months ago (9F, pp.
 27 53-55). He was diagnosed with a right eye visual field defect of OD arcuate defect and
 28 small disc, which was probably non-arteritic ischemic optic neuropathy (*id.*). His left eye

1 was normal (*id.*)” [Doc. No. 13-2, at p. 32, referring to Doc. No. 13-12, at pp. 137-138.]
2 The record also includes an earlier treatment note dated January 17, 2019, from a visit
3 with Samuel Gawargi, an optometrist, indicating plaintiff complained of “[s]ignificant
4 light sensitivity.” [Doc. No. 13-2, at p. 52.] In addition, as noted above, the ALJ’s list of
5 plaintiff’s severe impairments includes migraines and optic neuritis of the right eye.
6 [Doc. 13-2, at p. 28.] During the hearing before the ALJ, plaintiff testified he is “light
7 sensitive.” [Doc. No. 13-2, at p. 57.] The ALJ included the following lighting limitation
8 as part of his analysis of plaintiff’s RFC: “[T]he claimant must avoid lighting brighter
9 than daylight or lighting [brighter than that] typically encountered in a business or factory
10 environment.” [Doc. No. 13-2, at p. 29.]

11 In his Merits Brief, plaintiff acknowledges there is a “substantial evidentiary basis”
12 for imposing a limitation on exposure to bright lighting, because plaintiff has “optical
13 neuritis in the right eye and a migraine headaches syndrome” that were identified in the
14 ALJ’s findings on plaintiff’s severe impairments. However, plaintiff contends the ALJ’s
15 lighting limitation is not explained in a rational and logical manner and is essentially
16 meaningless. [Doc. No. 14, at pp. 4-6.] According to plaintiff, “[t]he ability to tolerate
17 an environment engulfed in sunlight is not a limitation at all. . . . Imposing a limitation
18 against exposure to the brightest light that the human eye encounters in a state of nature is
19 not a limitation imposed by the presence of optic neuritis or migraine headaches, but a
20 limitation imposed by simple biology.” [Doc. No. 14, at pp. 5-6.] Plaintiff wants the
21 Court to remand the case, because “the ALJ must articulate the limitation that is rational
22 and logical” but failed to do so in this case. [Doc. No. 14, at p. 6.]

23 Defendant contends the ALJ properly based the lighting limitation on the findings
24 of R. Reid, M.D., a state agency physician, but the Court was unable to confirm this
25 contention in the record. [Doc. No. 17-1, at p. 2.] Instead, the ALJ’s decision states
26 Dr. Reid concluded plaintiff was limited to a “sedentary exertional capacity,” but the ALJ
27 concluded based on the “overall evidence of record” that plaintiff had “further exertional
28 and nonexertional limitations.” [Doc. No. 13-2, at p. 32.] One of these further

1 limitations is to “avoid more than moderate noise and lighting brighter than daylight or
2 lighting [brighter than that] typically encountered in a business or factory
3 environment. . . .” [Doc. No. 13-2, at p. 33.]

4 On the other hand, the record does include treatment records that support a lighting
5 limitation. For example, the record includes a treatment note from an eye examination
6 completed January 17, 2019, by Samuel Gawargi, an optometrist. At this time, plaintiff
7 reported temporary visual field loss in the right eye, blurry vision in his right eye, and
8 “[s]ignificant light sensitivity.” [Doc. No. 13-12, at pp. 52-69.] Dr. Gawargi telephoned
9 plaintiff on January 24, 2019, to report the results of testing – “[s]uperior arcuate defect”
10 and a diagnosis of “right optic neuropathy.” [Doc. No. 13-12, at p. 79.] Plaintiff was then
11 referred to the Ophthalmology Department. [Doc. No. 13-12, at p. 79.] Thereafter, as
12 noted in the ALJ’s decision, treatment records indicate plaintiff was examined on
13 March 1, 2019 by Diane Kim, M.D., an ophthalmologist. [Doc. No. 13-12, at pp. 135-
14 148.] A “visual field defect” was diagnosed. [Doc. No. 13-12, at pp. 139, 141.] This
15 treatment record also includes the following notation “probably non-arteritic ischemic
16 optic neuropathy right eye.” [Doc. No. 13-12, at p. 139.]

17 Based on the above-described information in the record, it was reasonable for the
18 ALJ to include a light sensitivity limitation in his RFC assessment that precludes plaintiff
19 from working in environments with “brighter” lighting due to his claimed “light
20 sensitivity” and the treatment records indicating he had a defect in his right eye. [Doc.
21 No. 13-2, at p. 29.] As the Court reads it, the ALJ’s light limitation is unambiguously
22 designed to preclude plaintiff from working in facilities that use abnormally bright lights
23 to be able to get work done. In addition, as defendant points out, plaintiff has not
24 presented anything indicating this limitation did not adequately address his “light
25 sensitivity” and/or vision defect. There is also nothing to indicate remanding the case for
26 further articulation of the ALJ’s light sensitivity limitation would alter the outcome of the
27 proceeding. The vocational expert’s testimony indicates the ALJ’s lighting limitation
28 would not have an impact on the jobs that could be performed by an individual of

1 plaintiff's age, education, experience, and impairments. [Doc. No. 13-2, at pp. 67-69.]
2 Therefore, under the circumstances presented, there is no basis for a reversal or remand
3 for further consideration of whether the light limitation is rational or appropriate.

4 **B. Rejection of Plaintiff's Testimony.**

5 Plaintiff argues the Court should reverse the ALJ's denial of benefits and remand
6 the case for an award of benefits or further proceedings, because the ALJ failed to state
7 clear and convincing reasons for rejecting plaintiff's testimony indicating he is disabled
8 by pain and other physical limitations, such as difficulty with reaching. [Doc. No. 14, at
9 pp. 6-11.] Defendant argues the ALJ appropriately and legitimately discounted plaintiff's
10 testimony about disabling pain and limitations for credibility reasons. [Doc. No. 17-1, at
11 pp. 2-3.]

12 As plaintiff contends, the Ninth Circuit requires an ALJ to state "clear and
13 convincing reasons" for rejecting a claimant's testimony about the severity of symptoms
14 where a claimant is not malingering and has provided "objective medical evidence of an
15 underlying impairment which might reasonably produce the pain or other symptoms
16 alleged." *Brown-Hunter, v. Colvin*, 806 F.3d 487, 492-493 (9th Cir. 2015). "A finding
17 that a claimant's testimony is not credible 'must be sufficiently specific to allow a
18 reviewing court to conclude the adjudicator rejected the claimant's testimony on
19 permissible grounds and did not arbitrarily discredit a claimant's testimony regarding
20 pain.' [Citation omitted.] 'General findings are insufficient; rather, the ALJ must
21 identify what testimony is not credible and what evidence undermines the claimant's
22 complaints.' [Citation omitted.]" *Id.* at 493. "The ALJ must specifically identify the
23 testimony she or he finds not to be credible and must explain what evidence undermines
24 the testimony. [Citation omitted.] The evidence upon which the ALJ relies must be
25 substantial." *Holohan v. Massanari*, 246 F.3d 1195, 1208 (9th Cir. 2001).

26 Here, the ALJ identified testimony he did not find credible because it was not
27 consistent with "the overall medical evidence" in the record:

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1 In testimony, the claimant contended he had pain even when doing
2 nothing; he smoked marijuana to control pain; he had severe pain for a day
3 if he lifted something heavy or moved in the wrong direction; he had
4 shooting pain down his legs at least twice a month; he had to bend his knees
5 and hips when picking up a pencil off the floor; he had to block out light
6 and sound; and he fell asleep during the day from his pain medication. (See
7 Testimony.)

8 Despite these assertions, the overall medical evidence does not
9 support a finding of work-precluding disability. However, the decision
10 herein finds that the claimant has been limited to a range of sedentary
11 capacity with nonexertional limitations.

12 After careful consider of the evidence, the undersigned finds that the
13 claimant’s medically determinable impairments could reasonably be
14 expected to cause the alleged symptoms; however, the claimant’s
15 statements concerning the intensity, persistence and limiting effects of these
16 symptoms are not entirely consistent with the medical evidence and other
17 evidence in the record for the reasons explained in this decision.

18 [Doc. No. 13-2, at p. 30.]

19 Thereafter, the ALJ summarized “[t]he medical evidence [that] supports the
20 findings” adopted in his decision. [Doc. No. 13-2, at p. 30.] First, the cited
21 evidence indicates plaintiff had a mild to moderate compression fracture in this
22 back from “a car accident 20 years ago” and surgery on his right shoulder on
23 February 2, 2012. Although the medical records indicate plaintiff had
24 hypermobility and pain in his shoulders, hips, and knees, the ALJ cited several
25 treatment notes indicating pain was managed conservatively with non-steroid anti-
26 inflammatory medication, Tylenol, Ibuprofen, Tramadol, and physical therapy.
27 [Doc. No. 13-2, at pp. 30-32.] In addition, a treatment record dated February 10,
28 2015, three years after plaintiff’s shoulder surgery, states that plaintiff reported
right shoulder pain “that was intermittent over the years.” [Doc. No. 13-2, at
p. 31.]

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1 Second, the ALJ referenced a physical therapy note dated October 31, 2017
2 reporting that plaintiff could lift ten pounds without pain. He was able to continue an
3 exercise program safely and independently at home. [Doc. No. 13-2, at p. 31.]

4 Third, the ALJ summarized a report from a consultative examination completed
5 on November 27, 2018, by Thomas Sabourin, M.D. This report states that plaintiff
6 “had normal posture with sitting and standing; he sat comfortably; he was able to rise
7 from a chair without difficulty; he had no limp and walked with knee braces; he had no
8 difficulty getting on and off the examination table; . . . he had a negative straight leg
9 raising test in supine and sitting positions; he had good strength in the shoulders with a
10 well-healed arthroscopy scar on the right; he had some pain on the right after extension;
11 and he had satisfactory motor strength in all extremities (6F, pp. 4-6).” [Doc. No. 13-2,
12 at p. 32, referring to 13-8, at pp. 35-48.]

13 Fourth, the ALJ also referenced findings by two other reviewing physicians,
14 R. Reid, M.D., and G. Singh, M.D., who evaluated plaintiff’s medical records and
15 concluded he is not disabled and is still able to work with limitations to address his
16 impairments. [Doc. No. 13-2, at pp. 32-33, referring to Doc. No. 13-3, at pp. 1-14; 30-
17 40.]

18 Lastly, as defendant points out, the ALJ’s decision cites the portions of
19 Dr. Sabourin’s November 27, 2018 examination report stating plaintiff had a
20 “significantly hostile attitude,” was uncooperative, and only allowed three-quarters of
21 the examination to be completed. Plaintiff refused to allow examination of his knees
22 and other areas. [Doc. No. 13-2, at p. 33, referring to 13-8, at pp. 35-39.] In the Ninth
23 Circuit, a claimant’s failure “to give maximum or consistent effort” during physical
24 evaluations is “compelling” evidence supporting an ALJ’s lack of credibility finding.
25 *Thomas v. Barnhart*, 278 F.3d 947, 959 (9th Cir. 2002). *See also Tonapetyan v. Halter*,
26 242 F.3d 1144, 1148 (9th Cir. 2001) (citing the claimant’s lack of cooperation during
27 consultative examinations and inconsistent statements as specific and convincing
28 reasons to discredit the claimant’s testimony); 20 C.F.R. § 404.1518; 20

1 C.F.R. § 416.918(a) (stating that a claimant may be considered “not disabled” for
2 “failing or refusing to take part in a consultative examination or test” without a good
3 reason).

4 In sum, contrary to plaintiff’s contentions, the medical evidence cited by the ALJ
5 includes clear and convincing reasons for rejecting plaintiff’s testimony that his pain
6 and other symptoms are disabling. The medical evidence cited by the ALJ also
7 constitutes substantial evidence supporting the conclusion that plaintiff remains capable
8 of sedentary work with additional limitations and that plaintiff can perform a significant
9 number of jobs that exist in the national economy based on his age, education, work
10 experience, and RFC. Therefore, the Court finds the ALJ’s decision must be affirmed,
11 because there is no basis for a reversal or remand for further proceedings.

12 **Conclusion**

13 Based on the foregoing, substantial evidence supports the ALJ’s decision that
14 plaintiff is not disabled, because he has the RFC to perform “sedentary work,” as
15 defined by Social Security regulations, with additional restrictions set forth in the ALJ’s
16 RFC assessment, and is able to perform a significant number of jobs available in the
17 national economy. Accordingly,

18 IT IS HEREBY ORDERED that defendant’s Motion for Summary Judgment is
19 GRANTED [Doc. No. 17] and plaintiff’s Merits Brief seeking reversal or remand is
20 DENIED [Doc. No. 14].

21 IT IS FURTHER ORDERED that the final decision of the Commissioner of
22 Social Security is affirmed. The Clerk of the Court shall enter judgment accordingly
23 and terminate the case.

24 IT IS SO ORDERED.

25 Dated: August 5, 2021

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27 Hon. Karen S. Crawford
28 United States Magistrate Judge