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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

MARK CREECH,  
Plaintiff,  
vs.

Civil No. 09-6275-AA  
OPINION AND ORDER

MICHAEL J. ASTRUE,  
Commissioner of Social Security,  
Defendant.

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3 AIKEN, Chief Judge:

4 Claimant, Mark Creech, brings this action pursuant to the  
5 Social Security Act (the Act), 42 U.S.C. §§ 405(g) and  
6 1383(c)(3), to obtain judicial review of a final decision of the  
7 Commissioner denying his application for Supplemental Security  
8 Income (SSI) disability benefits under Title XVI of the Act. For  
9 the reasons set forth below, the Commissioner's decision is  
10 affirmed and this case is dismissed.

#### 11 **PROCEDURAL BACKGROUND**

12 Plaintiff was previously denied benefits in January 2004.  
13 Tr. 8. Plaintiff then filed a new application for SSI in  
14 February 2006. Plaintiff alleged disability beginning June 1998  
15 due to back and neck pain and carpal tunnel. Tr. 134. The  
16 Commissioner denied plaintiff's application initially and on  
17 reconsideration. An Administrative Law Judge (ALJ) held hearings  
18 on March 18, 2008, and October 28, 2008. Tr. 27-50, 272-312.  
19 Following the March 2008 hearing, the ALJ continued the matter in  
20 order to obtain testimony from a vocational expert (VE). Id. On  
21 November 28, 2008, the ALJ issued a decision finding plaintiff  
22 not disabled at step five finding he could perform work existing  
23 in significant numbers in the national economy. Tr. 53-65. The  
24 Appeals Council denied plaintiff's request for review, making the  
25 ALJ's decision the Commissioner's final decision. Tr. 1-4. The  
26 relevant period under review is from March 2006, to November 28,  
27 2008.  
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1 period of not less than 12 months. . . ." 42 U.S.C. §  
2 423(d)(1)(A).

3 The Secretary has established a five-step sequential  
4 process for determining whether a person is disabled. Bowen v.  
5 Yuckert, 482 U.S. 137, 140 (1987); 20 C.F.R. §§ 404.1520,  
6 416.920. First the Secretary determines whether a claimant is  
7 engaged in "substantial gainful activity." If so, the claimant  
8 is not disabled. Yuckert, 482 U.S. at 140; 20 C.F.R. §§  
9 404.1520(b), 416.920(b).

10 In step two the Secretary determines whether the claimant  
11 has a "medically severe impairment or combination of  
12 impairments." Yuckert, 482 U.S. at 140-41; see 20 C.F.R.  
13 §§ 404.1520(c), 416.920(c). If not, the claimant is not  
14 disabled.

15 In step three the Secretary determines whether the  
16 impairment meets or equals "one of a number of listed impairments  
17 that the Secretary acknowledges are so severe as to preclude  
18 substantial gainful activity." Id.; see 20 C.F.R. §§  
19 404.1520(d), 416.920(d). If so, the claimant is conclusively  
20 presumed disabled; if not, the Secretary proceeds to step four.  
21 Yuckert, 482 U.S. at 141.

22 In step four the Secretary determines whether the claimant  
23 can still perform "past relevant work." 20 C.F.R. §§  
24 404.1520(e), 416.920(e). If the claimant can work, she is not  
25 disabled. If she cannot perform past relevant work, the burden  
26 shifts to the Secretary. In step five, the Secretary must  
27 establish that the claimant can perform other work. Yuckert, 482  
28 U.S. at 141-42; see 20 C.F.R. §§ 404.1520(e)-(g), 416.920(e)-(g).

1 If the Secretary meets this burden and proves that the claimant  
2 is able to perform other work which exists in the national  
3 economy, she is not disabled. 20 C.F.R. §§ 404.1566, 416.966.

#### 4 **DISCUSSION**

##### 5 1. The ALJ's Findings

6 At step one, the ALJ found that plaintiff did not perform  
7 substantial gainful activity after his alleged disability onset  
8 date. Tr. 58. At step two, the ALJ found that plaintiff's  
9 severe impairments were: status post neck surgery; alcohol abuse;  
10 learning disability, not otherwise specified. Tr. 58. At step  
11 three the ALJ found that plaintiff's impairments did not meet or  
12 equal the requirements of a listed impairment. The ALJ  
13 determined that plaintiff's residual functional capacity (RFC)  
14 was the performance of medium work. Tr. 59. Plaintiff was also  
15 limited by his inability to follow written instructions. Id. At  
16 step four, the ALJ found that plaintiff could not perform his  
17 past relevant work. Tr. 63. Finally, at step five, the ALJ  
18 found that based on vocational testimony, plaintiff was not  
19 disabled because there were jobs that existed in significant  
20 numbers in the national economy, including work as a hospital  
21 cleaner, kitchen helper, or cleaner. Tr. 64, 27-50.

##### 22 2. Plaintiff's Allegations of Error

###### 23 A. Plaintiff's Credibility

24 Plaintiff asserts that the ALJ failed to articulate clear  
25 and convincing reasons for finding his subjective complaints less  
26 than fully credible. Absent evidence of malingering, an ALJ must  
27 give clear and convincing reasons to reject a plaintiff's  
28 medically-related symptoms. Carmickle v. Comm'r, Soc. Sec.

1 Admin., 533 F.3d 1155, 1162 (9<sup>th</sup> Cir. 2008). Those reasons  
2 include conflicting medical evidence, effective medical  
3 treatment, daily activities inconsistent with the alleged  
4 symptoms, medical noncompliance, or poor work history.  
5 Lingenfelter v. Astrue, 504 F.3d 1028, 1040 (9<sup>th</sup> Cir. 2007).

6 The ALJ found that plaintiff's medically determinable  
7 impairments could reasonably be expected to produce some of the  
8 alleged symptoms; however, plaintiff's statements concerning the  
9 intensity, persistence and limiting effects of these symptoms  
10 were not credible to the extent they were inconsistent with the  
11 RFC assessment. The ALJ found that plaintiff's activities of  
12 daily living did not support his allegations of total disability.  
13 Tr. 60. Plaintiff told Dr. Gregor that he manages his activities  
14 of daily living including cooking, laundry, dishes, paying his  
15 cell phone bill, and using the computer. Tr. 252. He also wakes  
16 and feeds his mother who is ill. Id. Daily activities that are  
17 inconsistent with alleged symptoms are a relevant credibility  
18 consideration. Rollins v. Massanari, 261 F.3d 853, 857 (9<sup>th</sup> Cir.  
19 2001).

20 Further, Dr. Gregor completed a psycho diagnostic interview  
21 on April 16, 2008. Tr. 248-250. Plaintiff told Dr. Gregor of  
22 his history of drug and alcohol abuse. Dr. Gregor noted that  
23 although plaintiff's drinking did not necessarily interfere with  
24 work, his reported alcohol abuse was inconsistent with  
25 plaintiff's previous reports that he did not drink. Id.  
26 Plaintiff also revealed that he had a medical marijuana card and  
27 uses marijuana once per week at night to aid his sleep. Id. The  
28 ALJ noted that at the hearing plaintiff stated that although he

1 had prescriptions for pain killers and other drugs, he could not  
2 afford to have them filled. Tr. 62.

3 The ALJ also noted Dr. Nolan's report that plaintiff's  
4 father reported that plaintiff was out "getting a load of hay."  
5 Tr. 195-97. The ALJ found that the labor in transporting a load  
6 of hay was at odds with plaintiff's alleged capabilities, noting  
7 that a typical hay bale weighs approximately 80 pounds.

8 The ALJ articulated clear and convincing reasons for  
9 rejecting some of plaintiff's testimony concerning the degree of  
10 severity of his symptoms. Moreover, the ALJ fashioned a RFC  
11 finding that accounted for plaintiff's credible limitations. Tr.  
12 59. Finally, the ALJ provided clear and convincing reasons to  
13 support the credibility finding. Tr. 59-62.

14 B. Residual Functional Capacity Assessment

15 Plaintiff next argues that the ALJ's RFC assessment was  
16 improper in that it failed to account for all of plaintiff's  
17 limitations. I disagree and find that the ALJ's RFC assessment  
18 properly accounted for all of plaintiff's limitations that the  
19 ALJ found credible and were supported by the medical evidence in  
20 the record. Rollins v. Massanari, 261 F.3d 853, 856-57 (9<sup>th</sup> Cir.  
21 2001).

22 Plaintiff's RFC is the most he can do considering his  
23 impairments and limitations. SSR 96-8p. The issue of plaintiff's  
24 RFC is not a medical issue, but an administrative finding that is  
25 dispositive of the case. The final responsibility for deciding  
26 such issues is reserved to the Commissioner, and by delegation of  
27 authority, to the ALJ. SSR 96-5p. Regardless, however, when  
28 assessing plaintiff's RFC, the ALJ must consider the entire

1 record and explain the weight given to the medical evidence and  
2 testimony. Id. The ALJ found that plaintiff could perform  
3 medium work limited by his inability to follow written  
4 instructions. Tr. 59. The ALJ's RFC finding is correct because  
5 it "took into account those limitations for which there was  
6 support [in the record] [and] did not depend on [plaintiff's]  
7 subjective complaints that lacked credibility." Bayliss v.  
8 Barnhart, 427 F.3d 1211, 1217 (9<sup>th</sup> Cir. 2005).

9 Finally, substantial evidence supports the ALJ's reliance  
10 on the vocational expert's testimony that plaintiff could perform  
11 other work, including a hospital cleaner, kitchen helper, or  
12 cleaner and that those jobs existed in significant numbers in the  
13 national economy. Tr. 64, 38-42. The ALJ properly included all  
14 supported limitations in hypothetical questions to the vocational  
15 expert. Tr. 530-51.

16 **CONCLUSION**

17 The Commissioner's decision is based on substantial  
18 evidence, and is therefore, affirmed. This case is dismissed.  
19 IT IS SO ORDERED.

20 Dated this 29 day of September 2010.

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25 Ann Aiken  
26 United States District Judge  
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