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8 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 DANIEL P. JOSLYN,

11 Plaintiff,

12 v.

13 CAROLYN W. COLVIN, Acting  
14 Commissioner of the Social Security  
Administration,

15 Defendant.  
16

CASE NO. 14-cv-05277 JRC

ORDER ON PLAINTIFF'S  
COMPLAINT

17 This Court has jurisdiction pursuant to 28 U.S.C. § 636(c), Fed. R. Civ. P. 73 and  
18 Local Magistrate Judge Rule MJR 13 (*see also* Notice of Initial Assignment to a U.S.  
19 Magistrate Judge and Consent Form, Dkt. 5; Consent to Proceed Before a United States  
20 Magistrate Judge, Dkt. 6). This matter has been fully briefed (*see* Dkt. 16, 17, 18).

21 After considering and reviewing the record, the Court concludes that the ALJ did  
22 not err in relying on early opinions from plaintiff's treating physician as plaintiff has not  
23 demonstrated that his conditions worsened over time and the ALJ appropriately  
24

1 concluded that the treating physician was in the best position to provide an opinion  
2 regarding plaintiff's limitations. Similarly, plaintiff's argument that reliance on the  
3 opinions from a state agency physician was improper because the non-examining state  
4 agency physician did not review later records is not persuasive as plaintiff has not  
5 demonstrated that there was any significant worsening of his limitations from his  
6 impairments over time. The Court also concludes that the ALJ did not commit harmful  
7 error in his evaluation of plaintiff's mental impairments as the ALJ appropriately found  
8 that plaintiff had not demonstrated that any mental impairment that lasted for a duration  
9 of twelve months. Regarding the ALJ's assessment of plaintiff's credibility, it was  
10 supported by inconsistent statements made by plaintiff, as well as by the ALJ's thorough  
11 discussion of the medical evidence and the ALJ's finding that the objective medical  
12 evidence did not support plaintiff's allegations of disabling limitations.

14 Therefore, this matter is affirmed pursuant to sentence four of 42 U.S.C. § 405(g).

#### 15 BACKGROUND

16 Plaintiff, DANIEL P. JOSLYN, was born in 1965 and was 46 years old on the  
17 amended alleged date of disability onset of September 27, 2011 (*see* AR. 44, 165-66,  
18 167-72). Plaintiff has an eleventh grade education (AR. 45). Plaintiff has work  
19 experience as a construction worker (AR. 62) and briefly as a crew member on a fishing  
20 troller (AR. 197-98).

21 According to the ALJ, plaintiff has at least the severe impairments of  
22 "Degenerative disc disease; [and] bilateral carpal tunnel syndrome status post bilateral  
23 carpal tunnel release (20 C.F.R. §§ 404.1520(c) and 416.920(c))" (AR. 24).

1 At the time of the hearing, plaintiff was living in a mobile home with his dad and  
2 girlfriend (AR. 46-47).

### 3 PROCEDURAL HISTORY

4 Plaintiff's application for disability insurance ("DIB") benefits<sup>1</sup> pursuant to 42  
5 U.S.C. § 423 (Title II) and Supplemental Security Income ("SSI") benefits pursuant to 42  
6 U.S.C. § 1382(a) (Title XVI) of the Social Security Act were denied initially and  
7 following reconsideration (*see* AR. 70-77, 78-85, 88-94, 95-103). Plaintiff's requested  
8 hearing was held before Administrative Law Judge Scott R. Morris ("the ALJ") on March  
9 11, 2013 (*see* AR. 39-67). On March 29, 2013, the ALJ issued a written decision in  
10 which the ALJ concluded that plaintiff was not disabled pursuant to the Social Security  
11 Act (*see* AR. 18-38).

13 In plaintiff's Opening Brief, plaintiff raises the following issues: (1) Whether or  
14 not the ALJ properly evaluated the medical evidence; (2) Whether or not the ALJ  
15 properly evaluated plaintiff's testimony; (3) Whether or not the ALJ properly assessed  
16 plaintiff's residual functional capacity; and (4) Whether or not the ALJ erred by basing  
17 his step five finding on a residual functional capacity assessment that did not include all  
18 of plaintiff's limitations (*see* Dkt. 16, p. 1).

### 19 STANDARD OF REVIEW

20 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's  
21 denial of social security benefits if the ALJ's findings are based on legal error or not  
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23 <sup>1</sup> Plaintiff effectively withdrew his DIB application when he amended his alleged  
24 disability onset date at his administrative hearing (*see* Opening Brief, Dkt. 16, p. 2, n.2).

1 supported by substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d  
2 1211, 1214 n.1 (9th Cir. 2005) (*citing Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir.  
3 1999)).

#### 4 DISCUSSION

##### 5 (1) **Whether or not the ALJ properly evaluated the medical evidence.**

6 a. Non-examining state agency physician, Dr. Norman Staley, M.D.

7 Plaintiff first presents arguments regarding the ALJ's reliance in part on the  
8 opinion of non-examining state agency physician Dr. Norman Staley, M.D., whose  
9 opinion was given significant weight by the ALJ (AR. 29).

10 According to Social Security Ruling 96-6p, state agency medical consultants,  
11 while not examining doctors, "are highly qualified physicians and psychologists who are  
12 experts in the evaluation of the medical issues in disability claims under the Act." Social  
13 Security Ruling ("SSR") 96-6p, 1996 LEXIS 3 at \*4. Therefore, regarding state agency  
14 medical consultants, the ALJ is "required to consider as opinion evidence" their findings,  
15 and also is "required to explain in his decision the weight given to such opinions."  
16 *Sawyer v. Astrue*, 303 Fed. Appx. 453, \*455, 2008 U.S. App. LEXIS 27247 at \*\*2-\*\*\*3  
17 (9th Cir. 2008) (*citing* 20 C.F.R. § 416.927(f)(2)(i)-(ii); SSR 96-6p, 1996 SSR LEXIS 3,  
18 \*5) (memorandum opinion) (unpublished opinion). The ALJ did that here.

19  
20 Plaintiff contends that the ALJ erred by failing to acknowledge that non-  
21 examining state agency physician Dr. Staley did not review any evidence beyond  
22 February 2012 (*see* Opening Brief, Dkt. No. 16, p. 9). However, although plaintiff argues  
23 in a conclusory manner that plaintiff's "carpal tunnel syndrome and back pain worsened  
24

1 over time,” plaintiff does not cite any specific evidence that demonstrates this (*see id.*).  
2 Although this argument is preceded by a general six page recitation of the medical  
3 record, plaintiff makes no attempt to connect any particular aspect of the record to his  
4 argument, and furthermore, the majority of the recitation of the medical evidence covers  
5 a period preceding February, 2012 (*see id.*, pp. 3-9). This is insufficient. It is not the job  
6 of the Court to pour through a general recitation of facts from plaintiff in an attempt to  
7 interpret what aspects of the record plaintiff considers supportive of his argument. *See*  
8 *Maldonado v. Moralex*, 556 F.3d 1037, 1048 n.4 (9th Cir. 2009) (“Arguments made in  
9 passing and inadequately briefed are waived”) (*citing Halicki Films, L.L.C. v. Sanderson*  
10 *Sales & Mktg.*, 547 F.3d 1213, 1229-30 (9th Cir. 2008)); *see also Alder v. Wal-Mart*  
11 *Stores, Inc.*, 144 F.3d 664, 669 (10th Cir. 1998) (“Arguments inadequately briefed in the  
12 opening brief are waived . . . .”) (*citing Fed. R. App. P. 28*) (other citations omitted).  
13 Furthermore, a review of the medical evidence noted by plaintiff regarding the time  
14 period after February, 2012 does not demonstrate that plaintiff’s impairments worsened  
15 over time and do not demonstrate that any of the ALJ’s findings are not based on  
16 substantial evidence in the record as a whole, as discussed further below, *see infra*,  
17 section 1.b. Based on a review of the record, the Court finds persuasive defendant’s  
18 argument that plaintiff “simply offers a different interpretation of the evidence  
19 considered by the ALJ” (Dkt. 17, p. 12). As noted by defendant, according to the Ninth  
20 Circuit, a court should uphold an ALJ’s decision when the evidence is susceptible to  
21 more than one rational interpretation (*see id. (citing Tommasetti v. Astrue*, 533 F.3d 1035,  
22 1040 (9th Cir. 2008)). It is not the job of the court to reweigh the evidence: If the  
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1 evidence “is susceptible to more than one rational interpretation,” including one that  
2 supports the decision of the Commissioner, the Commissioner's conclusion “must be  
3 upheld.” *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002) (citing *Morgan v.*  
4 *Comm’r Soc. Sec.*, 169 F.3d 595, 601 (9th Cir. 1999)).

5 Based on the record as a whole, and for the reasons stated, the Court concludes  
6 that plaintiff has not demonstrated that the ALJ erred by not explicitly discussing the fact  
7 that Dr. Staley did not review any records beyond February, 2012. Even if there was such  
8 an error, it was harmless and did not affect the ultimate disability determination.  
9

10 Plaintiff also contends that the ALJ erred by giving significant weight to the  
11 opinion of Dr. Staley because Dr. Staley opined that plaintiff did not suffer from  
12 manipulative limitations (*see* Opening Brief, Dkt. No. 16, p. 9). However, even if the  
13 ALJ did err with respect to this aspect of Dr. Staley’s opinion, which the Court does not  
14 so conclude, any error is harmless, as the ALJ clearly and explicitly explained why he  
15 disregarded this aspect of Dr. Staley’s opinion and continued his reasoning regarding his  
16 own determination regarding plaintiff’s residual functional capacity (“RFC”) as follows:

17 Although the claimant has some limitations due to his carpal tunnel  
18 syndrome, he still maintains the ability to perform most household  
19 chores. He can pull weeds. He can open jars. He can open cans. He  
20 reported he still maintains an active lifestyle preparing meals, taking care  
21 of his personal needs, feeding animals and going grocery shopping. The  
22 claimant’s self-described activities are consistent with the restrictions in  
23 the [RFC] outlined above. Dr. Staley’s opinion is also consistent with  
24 Dr. Lang’s opinion regarding the claimant’s abilities.

(AR. 29).

1           Therefore, the Court concludes that the ALJ adequately explained why he rejected  
2 this aspect of Dr. Staley’s opinion regarding a lack of manipulative limitations, and also  
3 supported his RFC finding regarding plaintiff’s manipulative limitations with substantial  
4 evidence in the record (*see id.*). Therefore, any error is harmless error.

5           The Ninth Circuit has “recognized that harmless error principles apply in the  
6 Social Security Act context.” *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012)  
7 (*citing Stout v. Commissioner, Social Security Administration*, 454 F.3d 1050, 1054 (9th  
8 Cir. 2006) (collecting cases)). The Ninth Circuit noted that “in each case we look at the  
9 record as a whole to determine [if] the error alters the outcome of the case.” *Id.* The court  
10 also noted that the Ninth Circuit has “adhered to the general principle that an ALJ’s error  
11 is harmless where it is ‘inconsequential to the ultimate nondisability determination.’” *Id.*  
12 (*quoting Carmickle v. Comm’r Soc. Sec. Admin.*, 533 F.3d 1155, 1162 (9th Cir. 2008))  
13 (other citations omitted). The court noted the necessity to follow the rule that courts must  
14 review cases “‘without regard to errors’ that do not affect the parties’ ‘substantial  
15 rights.’” *Id.* at 1118 (*quoting Shinsheki v. Sanders*, 556 U.S. 396, 407 (2009) (*quoting* 28  
16 U.S.C. § 2111) (codification of the harmless error rule)).

17           Here, although Dr. Staley’s opinion regarding plaintiff’s lack of manipulative  
18 limitations may not have been supported by substantial evidence in the record, it is clear  
19 that the ALJ did not credit this opinion from Dr. Staley, as the ALJ found that plaintiff  
20 did have manipulative limitations (*see* AR. 25). The ALJ found that plaintiff only could  
21 “occasionally finger and feel when using his left upper extremity and frequently finger  
22 and feel when using his right upper extremity” (*see id.*). Therefore, any error in Dr.  
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1 Staley's opinion regarding manipulative limitations did not affect the ALJ's RFC, as the  
2 ALJ determined that plaintiff did suffer from manipulative limitations, and noted Dr.  
3 Staley's error in that respect. The ALJ also explained how the other aspects of Dr.  
4 Staley's opinion were consistent with the opinion of treating physician, Dr. Lang, and  
5 how they were supported by the medical record and by claimant's statements. The Court  
6 concludes that there is no error, but even if there was any error in relying in part on Dr.  
7 Staley's opinion, any error is harmless and did not affect the ultimate disability  
8 determination. *See Molina, supra*, 674 F.3d at 1115.  
9

10 b. Treating physician, Dr. Robert G.R. Lang, M.D.

11 Plaintiff also argues that the ALJ erred by giving significant weight to an opinion  
12 from Dr. Lang that pre-dated plaintiff's alleged disability onset date; however, the  
13 doctor's opinion still is relevant as plaintiff has not demonstrated how the record  
14 indicates significant worsening of plaintiff's condition after this point in time.

15 For example, regarding plaintiff's back impairment, approximately a month after  
16 plaintiff's amended alleged date of disability onset of September 27, 2011, plaintiff  
17 received a second MRI which indicated, as noted by plaintiff:

18 (1) at L2-L3, a small caudal left foraminal protrusion without neural  
19 compress, *unchanged*; (2) at L3-L4, a small left foraminal protrusion  
20 with underlying high intensity zone, causing mild effacement at the  
21 exiting left L3 nerve root, *unchanged*; (3) at L4-L5, left foraminal  
22 herniation and associated osseous ridging with moderate left foraminal  
23 stenosis, *unchanged*; and (4) at L5-S1, mild bilateral facet arthropathy  
24 and mild annular bulging, *unchanged*; and mild bilateral foraminal  
stenosis, *unchanged*.

(Dkt. 16, p. 6 (*citing* AR. 371) (emphases added)).



1 Similarly, as cited by plaintiff, a January, 2012 lumbar spine MRI indicated that  
2 “accounting for differences in technique, overall these changes are very similar to the  
3 MRI of October, 2011, and no significant progression of disease is evident” (Dkt. 16, p. 7  
4 (*citing* AR. 375)). Therefore, plaintiff has not demonstrated that his back impairment  
5 worsened over time, negating the earlier opinion of Dr. Lang.

6 Regarding plaintiff’s carpal tunnel syndrome, as noted by plaintiff, in July, 2012,  
7 Dr. Kirk D. Danielson, M.D. indicated that an electrodiagnostic study on plaintiff  
8 “showed evidence of moderate bilateral median neuropathy at the wrists (carpal tunnel  
9 syndrome) affecting both sensory and motor components, and he noted that the right side  
10 was *mildly improved* compared to the prior March 2011 study, while the left was  
11 *relatively similar*” (*id.*, pp. 7-8 (*citing* AR. 423-24) (emphases added)). Also as noted by  
12 plaintiff, in March, 2013, among other notations, Dr. Lang noted that plaintiff “had  
13 *improved sensation* in the extremities . . . .” (*id.*, p. 9 (*citing* AR. 523, 525)) (emphasis  
14 added)).  
15

16 For the reasons stated and based on the record as a whole, the Court concludes that  
17 plaintiff has not demonstrated error in the ALJ’s reliance on a September 9, 2011 opinion  
18 from Dr. Lang that plaintiff could perform light work with his argument that “medical  
19 evidence after [September 9, 2011] shows that [plaintiff’s] carpal tunnel syndrome and  
20 back pain both worsened subsequent to that date” (*see id.*, p. 10 (*citing* AR. 29-30, 292,  
21 319)).  
22

23 Plaintiff also argues that the ALJ erred by relying on Dr. Lang’s January 2012  
24 opinion that “[if] the patient was able to obtain his license again it is likely that he would

1 | be able to return to productivity” because the opinion “does not prove that [plaintiff]  
2 | could perform *competitive work on a full-time basis*” (*see id.*, p. 10 (*citing* AR. 29-30,  
3 | 292, 319)). Although it is true that this opinion from Dr. Lang does not prove that  
4 | plaintiff was capable of competitive work, this fact does not prevent the ALJ from relying  
5 | in part on this opinion from the treating physician. Plaintiff also contends that the ALJ  
6 | erred by relying on this latter opinion from Dr. Lang because “more recent medical  
7 | evidence, including much evidence from Dr. Lang [] shows that [plaintiff’s] carpal tunnel  
8 | syndrome and back pain both continued to worsen over time” (*id.*). As discussed above,  
9 | the medical evidence cited by plaintiff does not demonstrate that plaintiff’s conditions  
10 | worsened over time.  
11 |

12 |         Although plaintiff also directs the Court to a particular portion of the record in  
13 | support of this argument, in that “Dr. Lang’s most recent opinion [indicated] that  
14 | [plaintiff] had moderate to severe carpal tunnel syndrome of the right hand, which  
15 | required a second carpal tunnel surgery,” (*id.* at p. 11 (*citing* AR. 529)), as cited by  
16 | plaintiff earlier in his brief, on “March 10, 2011, [Dr.] Mohammad A. Saeed, M.D.,  
17 | found that an electrodiagnostic evaluation of [plaintiff] supported findings compatible  
18 | with bilateral carpal tunnel syndrome, right more than the left, appearing moderately  
19 | severe to severe on the right and moderately severe on the left” (*id.* at p. 4 (*citing* AR.  
20 | 298). Again, plaintiff has not demonstrated that his impairments significantly worsened  
21 | over time, negating the earlier opinions from Dr. Lang relied on by the ALJ.  
22 |

23 |         Based on the reasons stated and on the record as a whole, the Court concludes that  
24 | plaintiff has not demonstrated that the ALJ erred in relying on the specified opinions of

1 Dr. Lang, plaintiff's treating physician. Instead, the Court concludes that the ALJ's  
2 determination to give Dr. Lang's opinion significant weight, "because he is the claimant's  
3 treating provider and is best suited to opine on how the claimant's impairments impact  
4 his ability to perform work activities," and the ALJ's finding that Dr. Lang's "opinion is  
5 also consistent with the other objective findings in the claimant's file and the claimant's  
6 own statements regarding his abilities" are supported by substantial evidence in the  
7 record as a whole (*see* AR. 30). The Court finds no harmful legal error.

8 c. Dr. Kimberly Wheeler, Ph.D., examining psychological doctor

9 Although plaintiff implies that the ALJ failed to evaluate the opinion of Dr.  
10 Wheeler properly and argues that "an ALJ is required to evaluate 'every medical  
11 opinion,'" the ALJ did evaluate the opinion of Dr. Wheeler (*see* Dkt. 16, p. 11 (citation  
12 and footnote omitted)).

13 The ALJ included the following discussion in his written opinion:

14 Dr. Kimberly Wheeler, Ph.D. performed a psychological evaluation of  
15 the claimant in September 2012 and diagnosed him with an adjustment  
16 disorder because of his emotional difficulties dealing with his inability to  
17 perform physical activities (internal citation to Exhibit 29F/2). Dr.  
18 Wheeler even noted that addressing the claimant's condition as a  
19 disorder "is somewhat of a stretch, but is the best way to capture his  
20 diminished self-esteem in the absence of employment and full physical  
21 integrity" (internal citation to 29F/2). She identified no restrictions in the  
22 claimant's ability to perform work-related activities due to his  
23 adjustment disorder (internal citation to 29F/2). She also noted the  
24 claimant would not be impaired for any length of time due to his  
impairment (internal citation to 29F/4). Furthermore, the claimant's  
alleged mental impairment is not expected to last for more than 12  
months. Medical records from January 2013 indicate the claimant had no  
mental deficits. He was oriented on all spheres (internal citation to  
34F/23). He had normal insight and judgment (internal citation to  
34F/23). He had inappropriate mood and affect (internal citation to

1 34F/23). Because the claimant was only diagnosed with an adjustment  
2 disorder in September 2012 and he showed no impairment in his mental  
3 functioning and later medical records, his alleged mental impairment is  
4 unlikely to meet the durational requirement necessary to be considered a  
5 severe impairment. There is also no indication that his alleged  
6 adjustment order would more than minimally limits his ability to  
7 perform any work-related activities.

8 (AR. 24).

9 Although plaintiff complains that the ALJ erred when reviewing the opinion of Dr.  
10 Wheeler, based on a review of the relevant record, the Court concludes that the ALJ's  
11 findings with respect to the opinion of Dr. Wheeler are supported by substantial evidence  
12 in the record. As noted by the ALJ, Dr. Wheeler opined that plaintiff's "emotional  
13 sequelae" had to do with diminished self worth, but "[d]ressing it up to the level of  
14 disorder is somewhat of a stretch" (*see* AR. 432). Although Dr. Wheeler opined that  
15 plaintiff suffered from some moderate limitations (*see* AR. 433), she also opined that his  
16 thought process and content were within normal limits; his orientation was within normal  
17 limits; his perception was within normal limits; his fund of knowledge was within normal  
18 limits; his concentration was within normal limits; his abstract thought ability was within  
19 normal limits; his insight and judgment were within normal limits; and he remembered  
20 three out of three objects immediately and two out of three with a delay and with the third  
21 object even being recognized among the presence of distractors (*see* AR. 434-35).  
22 Therefore, the Court concludes that the ALJ's finding that Dr. Wheeler "identified no  
23 restrictions in the claimant's ability to perform work-related activities due to his  
24 adjustment disorder" is based on substantial evidence in the record as a whole. In  
addition, importantly as noted by the ALJ, Dr. Wheeler opined that the expected duration

1 of time that plaintiff would suffer from any opined limitations would be “0 months” (*see*  
2 AR. 484). Therefore, the Court concludes that the ALJ’s finding that Dr. Wheeler “also  
3 noted the claimant would not be impaired for any length of time due to his impairment” is  
4 a finding based on substantial evidence in the record. This opinion from Dr. Wheeler also  
5 supports the finding by the ALJ that plaintiff’s impairment would not last the minimum  
6 duration of twelve months.

7  
8 For the reason stated and based on the record as a whole, the Court concludes that  
9 the ALJ did not err by failing to include any limitations from a mental impairment into  
10 plaintiff’s RFC. The Court concludes that the ALJ did not err in his evaluation of the  
11 opinion of Dr. Wheeler.

12 As noted by the ALJ, in January, 2013 -- about four months after the assessment  
13 from Dr. Wheeler -- plaintiff had intact memory, was oriented to time place person and  
14 situation, had normal insight, exhibited normal judgment, and demonstrated an  
15 appropriate mood and affect (*see* AR. 485). This information, too, supports the finding by  
16 the ALJ that any mental impairment of plaintiff was not severe and also did not last the  
17 minimum duration of 12 months. Although plaintiff argues that the ALJ erred by failing  
18 to conclude that plaintiff suffered from a severe mental impairment, for the reason stated  
19 and based on the record, the Court concludes that this finding by the ALJ is supported by  
20 substantial evidence in the record. The Court notes that plaintiff bears the burden to  
21 establish by a preponderance of the evidence the existence of a severe impairment that  
22 prevented performance of substantial gainful activity and that this impairment lasted for  
23 at least twelve continuous months. 20 C.F.R. §§ 404.1505(a), 404.1512(a) and (c),  
24

1 416.905(a), 416.912(a) and (c); *Yuckert, supra*, 482 U.S. at 146; *see also Tidwell v. Apfel*,  
2 161 F.3d 599, 601 (9th Cir. 1998) (*citing Roberts v. Shalala*, 66 F.3d 179, 182 (9th Cir.  
3 1995)). Any impairment that does not last continuously for twelve months does not  
4 satisfy the requirement. 20 C.F.R. §§ 404.1505(a), 404.1512(a) and (c), 416.905(a),  
5 416.912(a) and (c); *Roberts, supra*, 66 F.3d at 182.

6 Therefore, even if the ALJ did err by failing to fully credit an opinion about  
7 limitations from Dr. Wheeler, any error would be harmless, as plaintiff did not  
8 demonstrate that any mental impairment existed for a minimum of twelve months and Dr.  
9 Wheeler herself opined that plaintiff's limitations would not last for any period of time.

10  
11 **(2) Whether or not the ALJ properly evaluated plaintiff's testimony.**

12 Plaintiff contends that the ALJ erred by failing to credit fully plaintiff's allegations  
13 and testimony. However, for the reasons stated below and based on the record as a whole,  
14 the Court concludes that the ALJ's credibility determination is proper.

15 If the medical evidence in the record is not conclusive, sole responsibility for  
16 resolving conflicting testimony and questions of credibility lies with the ALJ. *Sample v.*  
17 *Schweiker*, 694 F.2d 639, 642 (9th Cir. 1999) (*citing Waters v. Gardner*, 452 F.2d 855,  
18 858 n.7 (9th Cir. 1971) (*Calhoun v. Bailar*, 626 F.2d 145, 150 (9th Cir. 1980)). An ALJ is  
19 not "required to believe every allegation of disabling pain" or other non-exertional  
20 impairment. *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989) (*citing* 42 U.S.C. §  
21 423(d)(5)(A) (other citations and footnote omitted)).

22  
23 If an ALJ rejects the testimony of a claimant once an underlying impairment has  
24 been established, the ALJ must support the rejection "by offering specific, clear and

1 convincing reasons for doing so.” *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996)  
2 (*citing Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir.1993)); *see also Reddick v. Chater*,  
3 157 F.3d 715, 722 (9th Cir. 1998) (*citing Bunnell v. Sullivan*, 947 F.2d 341, 343, 346-47  
4 (9th Cir. 1991) (*en banc*)). The Court notes that this “clear and convincing” standard  
5 recently was reaffirmed by the Ninth Circuit. *See Garrison v. Colvin*, 759 F.3d 995, 1015  
6 n.18 (9th Cir. July 14, 2014) (“The government’s suggestion that we should apply a  
7 lesser standard than ‘clear and convincing’ lacks any support in precedent and must be  
8 rejected”). As with all of the findings by the ALJ, the specific, clear and convincing  
9 reasons also must be supported by substantial evidence in the record as a whole. 42  
10 U.S.C. § 405(g); *see also Bayliss v. Barnhart*, 427 F.3d 1211, 1214 n.1 (9th Cir. 2005)  
11 (*citing Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir. 1999)).

13 Plaintiff indicated in November, 2011 that as part of his daily activities, he brings  
14 firewood in to the house (*see* AR. 190), but at his hearing, he testified that he does not lift  
15 even a hunk of wood to add it to the fire (*see* AR. 53). The Court concludes that the ALJ  
16 properly relied on this inconsistent testimony when failing to credit fully plaintiff’s  
17 allegations and testimony about his disabling limitations (*see* AR. 29). *See Turner v.*  
18 *Comm’r of Soc. Sec.*, 613 F.3d 1217, 1225 (9th Cir. 2010) (Ninth Circuit affirmed, noting  
19 that because of a “discrepancy in [the claimant’s] testimony, the ALJ found that [the  
20 claimant] could not be ‘found to be wholly credible regarding any allegation of total  
21 disability’”).

22  
23 The ALJ also relied on a finding that plaintiff’s allegations of disabling limitations  
24 were not supported by the objective medical evidence (*see* AR. 26).

1 Although once a claimant produces medical evidence of an underlying  
2 impairment, the ALJ may not discredit then a claimant's testimony as to the severity of  
3 symptoms based solely on a lack of objective medical evidence to corroborate fully the  
4 alleged severity of pain, here, the ALJ offered other reasons, such as the inconsistent  
5 statements about plaintiff's ability to lift and carry firewood into the house, *see supra* ,  
6 his statements in the record about his abilities and his activities of daily living (*see AR.*  
7 *28-29*). *See Bunnell, supra*, 947 F.2d at 343, 346-47 (*citing Cotton, supra*, 799 F.2d at  
8 1407).

9  
10 As noted by the ALJ, Dr. Mohammad A. Saeed, M.D. performed a physical exam  
11 of plaintiff and also “performed and electrodiagnostic evaluation of the claimant in  
12 October 2011 . . . . [and] concluded the claimant had only a mild abnormal study” (*see*  
13 *AR. 27 (citing AR. 302)*). The ALJ's finding is supported by substantial evidence, as Dr.  
14 Saeed performed an exam and an electrodiagnostic study on October 27, 2011, and  
15 concluded, among other things, that “[this] is a mildly abnormal study” (*see AR. 302*).  
16 This set of findings by the ALJ also supports the ALJ's finding that plaintiff's allegations  
17 of disabling limitations were not supported by the objective medical evidence.

18 Similarly, the ALJ noted a physical therapy visit in February, 2012 at which  
19 plaintiff reported that his pain was relieved by steroidal injections (*AR. 27 (citing AR.*  
20 *313)*). The ALJ also included the following regarding the evaluation with physical  
21 therapist Mr. Brian Reiton, PAC:  
22

23 A physical examination showed he had full strength in his lower  
24 extremities. His straight leg raise tests were normal on the right side and  
the left. The claimant requested to initiate chronic pain management for



1 his alleged back pain. Mr. Reiton suggested the claimant stretch and  
2 perform strengthening exercises to eliminate his back pain.

3 (*Id.* (*citing* AR. 315)).

4 The ALJ's discussion regarding this February, 2012 evaluation is supported by  
5 substantial evidence in the record. Plaintiff's lower extremity strength was normal, and  
6 the straight leg raise tests were normal on the right and left side (*see* AR. 315). This  
7 treatment note also supports the finding by the ALJ that plaintiff was prescribed only  
8 ibuprofen for his pain (*see id.*). Based on the record as a whole, the Court concludes that  
9 this set of findings by the ALJ also supports the ALJ's finding that plaintiff's allegations  
10 of disabling limitations were not supported by the objective medical evidence.

11 The ALJ also noted examination results from Dr. Lang in March, 2012, such as  
12 plaintiff's strong grips in both hands; that his opposition, finger extension and abduction  
13 were strong bilaterally; that plaintiff "walked with a normal gait and was able to heel and  
14 toe walk [and] [his] straight leg raises were negative on the right and positive on the left;  
15 [h]owever he had good strength in both of his legs" (*see* AR. 28 (*citing* AR. 443)). Again,  
16 the ALJ's findings are supported by substantial evidence in the record and support his  
17 finding that plaintiff's allegations of disabling limitations are not supported by the  
18 objective medical evidence.

19 The ALJ also noted various indications from plaintiff such as plaintiff's report that  
20 "he can touch all his thumbs to his fingers; [he] can open a jar of peanut butter; [he] can  
21 open a can of beer; [he] prepares meals for himself; [he] feeds his chickens and horses;  
22 [he] regularly performs household chores and washes the dishes; [he] pulls weeds out of  
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1 his garden; [and] [although] the claimant frequently complained of hand numbness, he  
2 had good grip strength and range of motion in his upper extremities” (AR. 28-29 (internal  
3 citations omitted)). The ALJ also noted as follows:

4 [Plaintiff] also has no difficulties performing his activities of daily living  
5 due to his back pain. He manages his own personal care. He cleans, he  
6 does laundry, he makes minor house repairs and gardens. In his Function  
7 Report, he indicated he is capable of lifting 15 to 20 pounds. The  
8 limitations in the residual functional capacity are also supported by the  
9 objective findings in his file. He routinely had full strength in his lower  
extremities. He demonstrated good range of motion and had mostly  
negative straight leg raises. He consistently walked with a normal gait.  
Furthermore, even his treating physician indicated he could return to  
work if he had a valid license.

10 (AR. 29 (internal citations omitted)).

11 For the reasons stated, the Court concludes that the ALJ’s finding regarding lack  
12 of support from the objective medical evidence was supported by substantial evidence in  
13 the record as a whole and that the ALJ did not err when evaluating credibility of plaintiff.  
14 The ALJ offered specific, clear and convincing reasons, supported by substantial  
15 evidence in the record, for the ALJ’s credibility determination.

17 **(3) Whether or not the ALJ properly assessed plaintiff’s residual**  
18 **functional capacity and whether or not the ALJ erred by basing his**  
19 **step five finding on a residual functional capacity assessment that did**  
20 **not include all of plaintiff’s limitations.**

21 These arguments by plaintiff depend on the other arguments that already have  
22 been discussed by the Court and found not persuasive, *see supra*, sections 1 and 2. The  
23 Court finds no error.

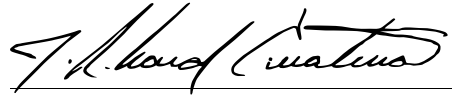
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1 CONCLUSION

2 Based on the stated reasons and the relevant record, the Court **ORDERS** that this  
3 matter be **AFFIRMED** pursuant to sentence four of 42 U.S.C. § 405(g).

4 **JUDGMENT** should be for defendant and the case should be closed.

5 Dated this 29th day of December, 2014.

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8 J. Richard Creatura  
9 United States Magistrate Judge  
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