

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA**

Richardson v. Martin O'Malley

Case No. 24-cv-03734-BLF · No. 24-cv-03734-BLF · Decided March 19, 2025

OPINION

Richardson v. Martin O'Malley

PER CURIAM.

1 2

3 UNITED STATES DISTRICT COURT

4 NORTHERN DISTRICT OF CALIFORNIA

5 SAN JOSE DIVISION

6 7 CLARENCE A. RICHARDSON, Case No. 24-cv-03734-BLF 8 Plaintiff, ORDER DENYING
PLAINTIFF'S

MOTION FOR SUMMARY

9 v. JUDGMENT AND AFFIRMING THE

DENIAL OF BENEFITS

10 LELAND DUDEK,¹ Acting Commissioner of Social Security, [Re: ECF Nos. 11, 15] 11
Defendant. 12 13 Plaintiff Clarence Richardson ("Richardson") appeals a final decision of
Defendant 14 Commissioner of Social Security ("the Commissioner") denying his application for
1) social 15 security disability insurance benefits ("DIB") under Title II of the Social Security Act
and 2) 16 supplemental security income benefits ("SSI") under Title XVI of the Social Security
Act. 17 Richardson asks the Court to reverse the Commissioner's decision and remand for
payment of 18 benefits or, alternatively, to remand for further administrative proceedings.
Richardson filed a 19 motion for summary judgment. See ECF Nos. 11-1 ("Mot."). The
Commissioner filed an opposition. 20 See ECF 15 ("Opp."). Richardson filed a reply. See ECF 18
("Reply"). 21 For the reasons discussed below, the Court DENIES Richardson's motion and
AFFIRMS 22 the denial of benefits. 23

I. BACKGROUND

24 Richardson was born on October 5, 1974, and was 44 years old at the time of his alleged 25
onset date. Admin. Record ("AR") 27, 1331. He has at least a high school education and has past
26 27 1 Leland Dudek, the Acting Commissioner of Social Security, is substituted as the
defendant in 1 work as a delivery driver. Id. at 27. On July 14, 2021, Richardson filed his Title II
and Title XVI 2 applications for DIB and SSI benefits. Id. at 17. He claimed disability beginning
on July 17, 2019, 3 due to a combination of impairments which included chronic kidney disease;
diabetes mellitus with 4 nephropathy, neuropathy and retinopathy; congestive heart failure;

cardiomyopathy; hypertension; 5 chronic venous insufficiency; and obesity. AR at 17, 20; Mot. at 5. Richardson has coverage to 6 remain insured until December 31, 2025. AR 18; Mot. at 5. 7 Richardson's application was denied initially and upon reconsideration. AR 17. A telephone 8 hearing before an administrative law judge ("ALJ") was held on October 13, 2023, at which 9 Richardson and a vocational expert testified. AR 17, 38. 10 The ALJ issued a written decision on November 17, 2023. AR 18. The ALJ found that 11 Richardson was not disabled at any time through the date of decision, and denied benefits on that 12 basis. *Id.* On April 30, 2024, the Appeals Council denied Richardson's request to review the ALJ's 13 decision, making the ALJ's decision the final decision of the Commissioner. See AR 1-4; Mot. at 2.

14 II. LEGAL STANDARD

15 A. Standard of Review 16 Pursuant to sentence four of 42 U.S.C. § 405(g), district courts "have power to enter, upon 17 the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision 18 of the Commissioner of Social Security, with or without remanding the cause for a rehearing." 42 19 USC § 405(g). However, "a federal court's review of Social Security determinations is quite 20 limited." *Brown-Hunter v. Colvin*, 806 F.3d 487, 492 (9th Cir. 2015). Federal courts "'leave it to 21 the ALJ to determine credibility, resolve conflicts in the testimony, and resolve ambiguities in the 22 record.'" *Id.* (quoting *Treichler v. Comm'r of Soc. Sec. Admin.*, 775 F.3d 1090, 1098 (9th Cir. 23 2014)). 24 A court "will disturb the Commissioner's decision to deny benefits only if it is not supported 25 by substantial evidence or is based on legal error." *Brown-Hunter*, 806 F.3d at 492 (internal 26 quotation marks and citation omitted). "Substantial evidence is such relevant evidence as a 27 reasonable mind might accept as adequate to support a conclusion, and must be more than a mere 1 996, 1002 (9th Cir. 2015) (internal quotation marks and citations omitted). A court "must consider 2 the evidence as a whole, weighing both the evidence that supports and the evidence that detracts 3 from the Commissioner's conclusion." *Id.* (internal quotation marks and citation omitted). If the 4 evidence is susceptible to more than one rational interpretation, the ALJ's findings must be upheld 5 if supported by reasonable inferences drawn from the record. See *id.* 6 Finally, even when the ALJ commits legal error, the ALJ's decision will be upheld so long 7 as the error is harmless. See *Brown-Hunter*, 806 F.3d at 492. However, "[a] reviewing court may 8 not make independent findings based on the evidence before the ALJ to conclude that the ALJ's 9 error was harmless." *Id.* The court is "constrained to review the reasons the ALJ asserts." *Id.* 10 (internal quotation marks and citation omitted). 11 B. Standard for Determining Disability 12 A claimant seeking DIB under Title II must establish disability on or prior to the date last 13 insured. *Deckard v. Saul*, 2020 WL 1157026, at *2 (N.D. Cal. Mar. 10, 2020); see *Burch v. Barnhart*, 14 400 F.3d 676, 679 (9th Cir. 2005); *Flaten v. Sec'y of Health & Human Servs.*, 44 F.3d 1453, 1460 15 (9th Cir. 1995). Determination of the date last insured involves a calculation of the number of 16 quarters the claimant was employed within a certain time frame. See 42 U.S.C. § 423. A claimant 17 seeking SSI under Title XVI must establish disability between the date of the application for benefits 18

and the date of the ALJ's decision. *Deckard*, 2020 WL 1157026, at *2; see *Sophie Jean P. v. Comm'r 19 of Soc. Sec.*, 2019 WL 6749415, at *2 (D. Or. Dec. 11, 2019). 20 “To determine whether a claimant is disabled, an ALJ is required to employ a five-step 21 sequential analysis, determining: (1) whether the claimant is doing substantial gainful activity; (2) 22 whether the claimant has a severe medically determinable physical or mental impairment or 23 combination of impairments that has lasted for more than 12 months; (3) whether the impairment 24 meets or equals one of the listings in the regulations; (4) whether, given the claimant’s residual 25 functional capacity, the claimant can still do his or her past relevant work; and (5) whether the 26 claimant can make an adjustment to other work.” *Ghanim v. Colvin*, 763 F.3d 1154, 1160 (9th Cir. 27 2014) (internal quotation marks and citations omitted). The residual functional capacity (“RFC”) 1 “The burden of proof is on the claimant at steps one through four, but shifts to the Commissioner at 2 step five.” *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1222 (9th Cir. 2009).

3 III. DISCUSSION

4 The Court first summarizes the ALJ’s decision denying benefits. The Court then addresses 5 Richardson’s challenges to the ALJ’s decision and the Commissioner’s response thereto. 6 A. ALJ’s Determinations 7 At step one, the ALJ determined that Richardson had engaged in substantial gainful activity 8 (“SGA”) during the period from July 2020 through December 2020. AR 19–20. The ALJ found that 9 there was no clear evidence as to when in July Richardson’s work began and could not determine 10 whether there was a 12-month period without SGA from the alleged onset date of July 17, 2019, to 11 the start of Richardson’s employment. *Id.* at 20. Accordingly, the ALJ moved on to consider step 12 two of the sequential analysis. 13 At step two, the ALJ found that Richardson had the following severe impairments: “chronic 14 kidney disease; diabetes mellitus with nephropathy, neuropathy and retinopathy; congestive heart 15 failure; cardiomyopathy; hypertension; chronic venous insufficiency; and obesity.” AR 20. The ALJ 16 also noted that Richardson had obstructive sleep apnea and hyperlipidemia but concluded that those 17 conditions were non-severe. *Id.* 18 At step three, the ALJ concluded that Richardson’s impairments did not meet or medically 19 equal the severity of one of the listed impairments in the regulations. AR 20. 20 Prior to making a step four determination, the ALJ found that the claimant has the residual 21 functional capacity to perform light work as defined in 20 CFR 404.1567(b) and 416.967(b) with 22 limitations. AR 21. The ALJ found that Richardson could “stand and/or walk a combined 2 hours 23 total in an 8-hour workday; occasionally climb, balance, stoop, kneel, crouch, and crawl; never 24 perform tasks requiring depth perception or peripheral vision; have no exposure to hazards such as 25 moving machinery; and have no exposure to fumes, odors, dust, gases, or poor ventilation.” *Id.* In 26 making this determination, the ALJ found that Richardson’s impairments could “reasonably be 27 expected to cause the alleged symptoms,” but that Richardson’s statements about the intensity, 1 and other evidence in the record. AR 22; see AR 22–27. Specifically, the ALJ considered the 2 objective evidence and

exam findings and found that evidence had failed to “clearly establish an inability to perform at least sedentary work.” AR 25. Additionally, the ALJ was not persuaded by the opinion of Edward Meyer, M.D., who had opined that Richardson could “walk zero city blocks without rest or severe pain.” AR 27. Based on the testimony of a vocational expert, at step four the ALJ found that Richardson was unable to perform any past relevant work. AR 27. At step five, the ALJ considered Richardson’s RFC, age, education, and work experience in connection with the Medical-Vocational Guidelines (“Guidelines” or “Grids”) and found that Richardson could perform jobs that existed in significant numbers in the national economy. AR 27. Specifically, the ALJ considered testimony from the vocational expert, and found that Richardson would be able to perform the requirements of certain representative occupations such as document specialist, cashier II, and surveillance system monitor. AR 28. Accordingly, the ALJ found that Richardson was not disabled as defined in the Social Security Act. Id. B. Richardson’s Challenges to the ALJ’s Determinations Richardson argues that the ALJ’s determination should be reversed for four reasons. First, Richardson contends that the ALJ erred in finding that Richardson engaged in substantial gainful activity from July 2020 through December 2020. Mot. at 12–13. Second, Richardson asserts that the ALJ’s RFC finding is not supported by substantial evidence. Id. at 13–16. Third, Richardson contends that the ALJ improperly rejected Richardson’s testimony. Id. at 16–18. Fourth, Richardson argues that the ALJ erred in considering the vocational expert’s testimony because it was based on the ALJ’s erroneous RFC finding. Id. at 18–19. The Commissioner argues that Richardson has failed to show any error in the ALJ’s determinations, and that substantial evidence supports the ALJ’s determinations at each step of the sequential analysis. See generally Opp. The Court addresses the parties’ arguments in turn. i. Richardson’s Substantial Gainful Activity Richardson argues that his work as a childcare provider to two children in his home from 1 than six months and it ended due to Richardson’s impairment. Mot. at 12-13; Reply at 2-3. To support his contention, Richardson argues that the ALJ found the work activities lasted no more 3 than six months. Reply at 2 (citing AR 20). Additionally, Richardson argues that he lost his work 4 due to his impairment because “[w]hen the family whose children he cared for moved away, th[e] 5 special arrangement which accommodated [his] disabilities disappeared.” Reply at 3. 6 The Commissioner argues that Richardson’s work constituted substantial gainful activity 7 because 1) he worked for seven months from July 2020 to January 2021, and 2) he has failed to 8 provide any evidence proving his work ended due to his conditions. Opp. at 2-3. The Commissioner 9 further argues that any error by the ALJ at step one would be harmless because she did not deny 10 Richardson’s claim for benefits based on this step alone and conducted the rest of the sequential 11 analysis. Opp. at 3. 12 A claimant will be disqualified at step one if he or she is engaged in “substantial gainful 13 activity.” *Thomas v. Astrue*, 359 F. App’x 761, 762 (9th Cir. 2009); see *Corrao*, 20 F.3d at 946; 20 14 C.F.R. § 404.1571. If a claimant’s earnings surpass an amount specified by the Social Security 15 regulations, there is a presumption of substantial gainful

activity, but that presumption may be 16 rebutted by the claimant. *Thomas*, 359 F. App'x at 762 (quoting *Keyes v. Sullivan*, 894 F.2d 1053, 17 1056 (9th Cir.1990)). Work that qualifies as an unsuccessful work attempt is not substantial activity. 18 20 C.F.R. § 404.1574(c); see *Gatliff v. Comm'r of Soc. Sec. Admin.*, 172 F.3d 690, 694 (9th Cir. 19 1999) ("The unsuccessful work attempt concept was designed as an equitable means of disregarding 20 relatively brief work attempts that do not demonstrate sustained substantial gainful employment."). 21 To qualify as an unsuccessful work attempt, the work must have: (1) lasted for a period of six months 22 or less; and (2) ended because of the claimant's impairments or because of the removal of a special 23 condition that enabled her to work. *Galanos v. Astrue*, No. 3:10-CV-05849-JCS, 2013 WL 1365901, 24 at 2–3 (N.D. Cal. Apr. 3, 2013); 20 C.F.R. § 404.1574(c). 25 The Court finds that the Commissioner did not err in determining that Richardson's work as 26 a childcare giver was substantial gainful activity. Richardson stated on his work history report that 27 he worked as a childcare provider from July 2020 to January 2021, which is seven months. See AR 1 overnight hours was "a special arrangement" to "accommodate[] his disabilities." See Reply at 2-3 2 (citing AR 44, 675, 722). The record establishes that Richardson worked as a childcare giver at his 3 home "through the night" because "[the children's] mom worked at night." AR 44. The record also 4 does not support Richardson's contention that his work as a childcare giver terminated because of 5 his impairment. Rather, Richardson's work ended because "[the children's family] moved." AR 45. 6 While the record does not contain evidence on Richardson's earnings in 2021, the ALJ considered 7 this lack of evidence and found Richardson "engaged in SGA from July 2020 through December 8 2020." AR 20. 9 The Court further finds that the ALJ correctly did not decide Richardson's claim based on 10 his SGA determination at step one. As the ALJ explained, there is no clear evidence in the record 11 "indicating when in July 2020 [Richardson's] work began," and thus she could not decide whether 12 "there [was] a 12-month period without SGA from the alleged onset date of July 17, 2019 to the 13 start of [Richardson's] employment." AR 20. Rather, "[i]n an abundance of caution," the ALJ 14 considered and analyzed the remaining steps in the sequential analysis. AR 20. Thus, the Court 15 finds that Richardson has not shown any harm concerning the ALJ's SGA determination because 16 the ALJ did not determine Richardson's claim at step one. See *Ford v. Saul*, 950 F.3d 1141, 1154 17 (9th Cir. 2020) ("We may affirm the ALJ's decision even if the ALJ made an error, so long as the 18 error was harmless, meaning it was inconsequential to the ultimate nondisability determination.") 19 (internal quotation omitted). 20 ii. The ALJ's RFC Finding Is Supported by Substantial Evidence 21 Richardson argues that the ALJ's RFC finding is not supported by substantial evidence. Mot. 22 at 13. Richardson argues that the ALJ's RFC finding has failed to account Richardson's testimony 23 that he needs to elevate his legs three to four times a week for 45 minutes and that the swelling in 24 his leg worsens if he sits for a long period. *Id.* (citing AR 47–48, 54). Richardson further contends 25 that the ALJ's RFC finding is not supported by the medical record. Mot. at 14-16. 26 In response, the Commissioner argues that substantial evidence supports the ALJ's RFC 27 finding that " 'the medical evidence

does not indicate' that [Richardson] would need to elevate his 1 that the Court should uphold the ALJ's RFC finding because it is supported by substantial evidence 2 in the record. Opp. at 5. 3 The Ninth Circuit has "established a two-step analysis for determining the extent to which a 4 claimant's symptom testimony must be credited." *Trevizo v. Berryhill*, 871 F.3d 664, 678 (9th Cir. 5 2017). First, "the claimant 'must produce objective medical evidence of an underlying impairment' 6 or impairments that could reasonably be expected to produce some degree of symptom." *Tommasetti 7 v. Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008) (quoting *Smolen v. Chater*, 80 F.3d 1273, 1281–82 8 (9th Cir. 1996)). Second, if the claimant does so and there is no affirmative evidence of malingering, 9 the ALJ can reject the claimant's testimony as to the severity of the symptoms "only by offering 10 specific, clear and convincing reasons for doing so." *Tommasetti*, 533 F.3d at 1309 (quoting 11 *Smolen*, 80 F.3d at 1281); see also *Garrison v. Colvin*, 759 F.3d 995, 1014 (9th Cir. 2014). 12 The Court finds that substantial evidence in the record supports the ALJ's RFC finding. 13 Here, the ALJ thoroughly considered the medical records and Richardson's symptoms in her RFC 14 finding. Specifically, the ALJ considered Richardson's statements that it is difficult for him walk 15 because his feet burn, tingle, and swell up; that he gets shortness of breath while walking; that he 16 gets swelling in his calf area and when that occurs he tries to lie down and elevate his legs; that he 17 elevates his legs three to four times a week for 45 minutes to an hour each time; and that Richardson 18 has been taking his medications and experiences side effects from his pain medication including 19 brain fog, dizziness, drowsiness, and vomiting sometimes. AR 21–22. The ALJ acknowledged that 20 Richardson's "medically determinable impairments could reasonably be expected to cause the 21 alleged symptoms," but found the "intensity, persistence and limiting effects" of Richardson's 22 symptoms "are not entirely consistent with the medical evidence and other evidence in the record." 23 AR 22. 24 In finding Richardson's statements inconsistent with medical and other evidence in the 25 record, the ALJ cited four main points. First, while Richardson alleges shortness of breath, fatigue, 26 and other symptoms, he was still able to provide childcare to two children from July 2020 to

27 December 2020. AR 25. Second, while Richardson alleges a need to elevate his legs, the "medical

1 be performed during work breaks and outside of work hours." *Id.* Third, few complaints for side 2 effects from his pain medications are noted by his providers and his mental status exams are within 3 normal limits. *Id.* Finally, the medical records indicate that he had been noncompliant with his 4 medications on more than one occasion, while his testimony indicates that he "always takes his 5 medications." *Id.* at 25; see *id.* at 564, 569, 583. Considering the medical evidence in the record, the 6 ALJ determined that while Richardson's activities might be limited to certain degrees, the "objective 7 evidence and exam findings" in the record "do not clearly establish an inability to perform at least 8 sedentary work." AR 24–25. Thus, the ALJ has thoroughly examined the medical record and 9 considered Richardson's testimony in making her RFC

finding. See *id.* at 22–27. 10 The ALJ provided clear and convincing reasons in finding Richardson’s testimony was not 11 entirely consistent with the medical evidence in the record. Contrary to Richardson’s contention that 12 the ALJ’s RFC finding excluded Richardson’s testimony on the frequency of Richardson’s need to 13 elevate his legs, *Mot.* at 13, the ALJ explicitly considered this testimony and decided it did not 14 conflict with the medical evidence on Richardson’s lower extremity edema, see AR 22–25. The ALJ 15 found no conflict between the medical evidence and Richardson’s testimony because, as stated 16 above, the medical evidence does not indicate that “elevation would be required during work hours” 17 beyond what could be done on regular work breaks or outside of work. AR 25; see also AR 47–48 18 (Richardson only testified that he must elevate his legs three to four times a week, not when during 19 the day the leg elevation must occur). To the extent that Richardson contends the vocational witness 20 testimony established that “someone who needed even one additional break during the workday of 21 15 minutes duration could not sustain competitive employment,” *Mot.* at 13, the ALJ considered the 22 vocational witness’s testimony and found that Richardson could still adjust to “other work that exists 23 in significant numbers in the national economy.” AR 28. 24 Indeed, the ALJ found that “multiple medical opinions indicate that [Richardson] is more 25 capable than alleged.” AR 25. The ALJ reviewed three state agency medical consultants and a 26 consultative examining physician who each assessed that Richardson could perform within the 27 bounds of at least a limited range of light work. See AR 25–26, 68, 86, 108, 127–28, 147, 1203–04. 1 account Richardson’s impairments and opined that Richardson can lift or carry 10 pounds 2 frequently; can stand or walk for about 6 hours in an 8-hour workday; can sit for about 6 hours in 3 an 8-hour workday; can occasionally climb ramp, stairs, ladders, ropes, or scaffolds; and can 4 frequently balance and stoop. AR 25, 67–68, 86–87. The ALJ then reviewed Dr. Vu’s assessment, 5 in which Dr. Vu agreed with Dr. Lee’s determination and further opined that Richardson should not 6 be exposed to hazards such as moving machinery. AR 25, 107–108, 110. The ALJ found that Dr. 7 Lee and Dr. Vu’s opinions were consistent with the record as a whole because there is “little 8 indication [from subsequent medical evidence] that his functional abilities materially worsened.” *Id.* 9 at 26. Indeed, the ALJ reduced Richardson’s standing time further than either Dr. Lee or Dr. Vu 10 determined to be necessary to only two hours in an 8-hour workday by taking into account the 11 consultative examiner’s findings, prior State agency determinations, and Richardson’s subjective 12 allegations. *Id.* at 27, 147, 1203–1204. To the extent Richardson relies on medical opinions of Dr. 13 Shafi, Dr. Bito-Onon, Dr. Meyer, and Dr. Jain to support his contention that he must elevate his legs 14 during work hours, this Court has reviewed those medical opinions and found that they do not 15 support his contention or contradict the ALJ’s finding that elevation would not be required during 16 work hours. See *Mot.* at 14–15 (citing AR 497, 499, 503, 513, 519, 527, 901-04, 1102-03, 1087, 17 1099, 1127-28, 1281, 1302, 1332-33) 18 In light of the ALJ’s thorough reasoning, this Court cannot “second-guess” an ALJ’s 19 reasonable interpretation of a claimant’s testimony because it is “supported by substantial evidence.” 20 *Rollins v. Massanari*,

261 F.3d 853, 857 (9th Cir. 2001). 21 Based on the ALJ's detailed review of Richardson's testimony and the medical evidence, 22 the Court finds the ALJ provided clear and convincing reasons for finding Richardson's testimony 23 inconsistent with the medical evidence as a whole. Thus, this Court finds that the ALJ's RFC 24 determination is supported by substantial evidence in the record. 25 iii. The ALJ Properly Discounted Richardson's Subjective Testimony. 26 Richardson argues that the ALJ failed to provide clear and convincing reasons for rejecting 27 his testimony about his symptoms. Mot. at 16-18. In response, the Commissioner argues that the 1 concluded" that Richardson "had the capacity to perform a reduced range of light work." Opp. at 6. 2 Under the Social Security Act, the ALJ is required to consider evidence other than the 3 medical record because subjective symptoms may suggest a higher severity of impairment than what 4 is reflected by the objective medical record. See 20 C.F.R. § 404.1529(c)(3). While an ALJ may not 5 discount a claimant's subjective complaints based solely on a lack of objective medical evidence, 6 the ALJ "may find the claimant's allegations of severity to be not credible" based on specific 7 findings and other evidence in the record. See *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9th Cir. 1991) 8 (en banc); see also *Burch*, 400 F.3d at 680–81 ("Although lack of medical evidence cannot form the 9 sole basis for discounting pain testimony, it is a factor the ALJ can consider in his credibility 10 analysis."). In determining the claimant's credibility, the ALJ relied on ordinary techniques of 11 credibility evaluation, such as (1) inconsistencies either in the testimony or between the testimony 12 and the claimant's conduct, and (2) the medical record addressing the claimant's symptoms. *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002); see also *Dixon v. Saul*, 411 F.Supp.3d 837, 854 14 (N.D. Cal. 2019). 15 The Court finds that the ALJ provided clear and convincing reasons for discounting 16 Richardson's "alleged loss of functioning," AR 25; see *Garrison v. Colvin*, 759 F.3d 995 (9th Cir. 17 2014) ("the ALJ can reject the claimant's testimony about the severity of her symptoms only by 18 offering specific, clear and convincing reasons for doing so.") (quoting *Smolen v. Chater*, 80 F.3d 19 1273, 1281 (9th Cir. 1996)). The ALJ reviewed the medical record and found that Richardson's 20 impairment improved with treatment. See AR 23–24. For example, the ALJ explained that in 21 February 2021, examination results showed significant improvement in Richardson's left 22 ventricular systolic function and no deep vein thrombosis in both legs. AR 24 (citing AR 1163). The 23 ALJ also explained that in February 2022, Richardson reported that his shortness of breath with 24 exertion was "mild" and blood pressure was "well controlled." AR 23 (citing AR 1284). Further, 25 the ALJ noted that in September 2022, Richardson reported that while burning "bothers him at times, 26 [...] it has gotten to the point that he just ignores it." AR 24 (citing AR 1243). In light of medical 27 records showing Richardson's leg swelling and burning symptoms were generally improved with 1 411 F.Supp.3d at 854 (quoting *Wellington v. Berryhill*, 878 F.3d 867, 876 (9th Cir. 2017)) ("Such 2 evidence of medical treatment successfully relieving symptoms can undermine a claim of 3 disability"). The ALJ also noted that Richardson did not always take medication as instructed, 4 suggesting that he did not experience debilitating effects such that he

had to take medication 5 regularly. See AR 22 (citing AR 569) (Richardson was noncompliant with most of his medications 6 for four months); AR 24 (citing AR 1243) (Richardson reported that he took gabapentin for his 7 symptoms every “now and then.”); *Orn v. Astrue*, 495 F.3d 625, 636 (9th Cir. 2007) (holding that 8 an ALJ may consider factors including “unexplained or inadequately explained, failure to seek 9 treatment or follow a prescribed course of treatment”) (citation omitted). 10 Further, as discussed above, the ALJ considered both Richardson’s testimony and the 11 objective medical record and found that most of the medical records did not corroborate 12 Richardson’s alleged degree of limitation. See AR 25–26. Specifically, the ALJ’s determination is 13 based on the assessments of three state agency medical consultants and a consultative examining 14 physician, each of whom opined that Richardson could sit for about 6 hours in an 8-hour workday, 15 that he could walk for at least 2 hours a day, and that he could perform within the bounds of at least 16 a limited range of light work. See *id.* (citing AR 68, 86, 108, 127–28, 147, 1203–04). In addition, 17 the ALJ considered, but discounted, Dr. Meyer’s opinion that Richardson can walk “zero city 18 block,” because (1) no other record supported the extreme conclusion, and (2) the necessary portion 19 of the assessment was incomplete. AR 27 (citing AR 1239). 20 Because the ALJ articulated clear and convincing reasons to conclude that Richardson’s 21 testimony was not entirely consistent with medical record, the Court finds that the ALJ properly 22 rejected Richardson’s testimony. See *Burch*, 400 F.3d at 681 (9th Cir. 2005) (“[medical evidence] 23 is a factor that the ALJ can consider in is credibility analysis”). 24 iv. The ALJ Properly Relied on the Vocational Expert Testimony. 25 Richardson argues that the Court should reverse the ALJ’s determination at step five because 26 she relied on the vocational expert’s testimony that was based on an incomplete hypothetical 27 question. Mot. at 18. Richardson argues that “the ALJ omitted Richardson’s credible allegations 1 the vocational expert. Jd. Richardson contends that the expert’s determination was based on an 2 || incomplete hypothetical and had no evidentiary value. Jd. at 18-19. 3 The Commissioner responds that Richardson’s argument “simply relies on and restates 4 [Richardson’s] unconvincing claims that the ALJ erred in considering evidence and offers no 5 independent basis for remand.” Opp. at 1 n.1. 6 The Court disagrees with Richardson’ argument that the ALJ improperly relied on vocational 7 expert’s testimony that was based on an incomplete hypothetical question. The Court finds that 8 Richardson’s contention is a restatement of his disagreement with the ALJ’s interpretation of the 9 record and the ALJ’s RFC finding. See Mot. at 18-19. As discussed above, the Court finds that the 10 || ALJ’s RFC determination is supported by substantial evidence in the record. Because the 11 hypothetical posed to the vocational expert is based on the ALJ’s correct RFC finding, the ALJ did 12 || not err in considering the vocational expert’s testimony. See *Stubbs-Danielson y. Astrue*, 539 F.3d 13 1169, 1175-76 (9th Cir. 2008) (finding the ALJ did not err in his RFC finding and rejecting a 14 claimant’s challenge to an ALJ’s step five analysis on the basis that the vocational expert’s 2 15 testimony was not based on an incomplete hypothetical posed by the ALJ). Accordingly, the Court 16 || finds that Richardson has failed to identify any

reversible error in the ALJ's step five analysis.

2 17 || IV. ORDER

Z 18 For the foregoing reasons, IT IS HEREBY ORDERED that Richardson's motion for 19
summary judgment is DENIED. The denial of benefits is AFFIRMED. 20 21 Dated: March 19,
2025

ETH LABSON FREEMAN

23 United States District Judge 24 25 26 27 28