

1 **DISPUTED ISSUE**

2 Whether the Administrative Law Judge (“ALJ”) properly considered the medical
3 evidence as contained in the examining physician’s opinion. (Jt. Stip. 4.)
4

5 **DISCUSSION**

6 **I. Reversal is not warranted based on the ALJ’s alleged failure to properly**
7 **consider the medical evidence as contained in the examining physician’s**
8 **opinion.**

9 Plaintiff asserts that the ALJ failed to properly consider an aspect of the opinion
10 of examining physician, Margaret Donohue, Ph.D. (Jt. Stip. 5-6.) Specifically, plaintiff
11 contends that the ALJ improperly disregarded Dr. Donohue’s opinion regarding
12 plaintiff’s ability to handle stress in a work environment. (Jt. Stip. 7.) The Court
13 disagrees.

14 In evaluating medical opinions, the Ninth Circuit distinguishes among three types
15 of physicians: (1) Treating physicians (who examine and treat), (2) examining
16 physicians (who examine but do not treat), and (3) non-examining physicians (who
17 neither examine nor treat). Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1996) (as
18 amended). Generally, an opinion of an examining physician is given more weight than
19 an opinion of a non-examining physician. Orn v. Astrue, 495 F.3d 625, 631 (9th Cir.
20 2007). When evaluating any medical opinion, including the opinion of an examining
21 physician, the ALJ considers several factors, including the following: (1) The amount
22 of relevant evidence supporting the opinion and the quality of the explanation provided;
23 (2) the consistency of the medical opinion with the record as a whole; (3) the
24 physician’s specialty; and (4) other factors that tend to support or contradict the opinion
25 such as “the degree of understanding a physician has of the Administration’s disability
26 programs and their evidentiary requirements and the degree of his or her familiarity
27 with other information in the case record.” Id. (internal quotation marks and citations
28 omitted); see also 20 C.F.R. § 404.1527(d)(3)-(6). Furthermore, if the examining

1 physician's opinion is supported by independent clinical findings based on objective
2 medical tests, such opinion constitutes substantial evidence. Orn, 195 F.3d at 632.

3 The Court concludes that the ALJ properly evaluated, and fully considered, Dr.
4 Donohue's opinion. The ALJ found Dr. Donohue's opinion to be "fully credible and
5 given weight based on the nature of the examining relationship[], supportability with
6 medical signs and laboratory findings, consistency with the record, and area[] of
7 specialization." (AR 19-20.) On December 1, 2006, Dr. Donohue conducted a
8 complete psychiatric evaluation of plaintiff at the request of the Department of Social
9 Services. (AR 240-43.) Dr. Donohue diagnosed plaintiff with cyclothymia² and
10 concluded, *inter alia*, that plaintiff has difficulty interacting with people, handling stress
11 in a work environment and with both concentration and attention. (AR 242.) The ALJ
12 noted that Dr. Donohue diagnosed plaintiff with an affective disorder and opined that
13 plaintiff had difficulty interacting with people on a consistent basis in a work setting.
14 (AR 18.) The ALJ accordingly concluded that "plaintiff has a depressive disorder that
15 is a severe impairment within the meaning of the regulations." (AR 18.)

16 The ALJ also expressly considered Dr. Donohue's opinions regarding plaintiff's
17 limitations and incorporated the findings into her residual functional capacity ("RFC")
18 assessment. (AR 18-19.) For example, Dr. Donohue found that plaintiff "has difficulty
19 interacting with other people. He is able to do that for a brief period of time
20 episodically in employment settings and has worked historically on a part time basis."
21 (AR 242.) The ALJ concluded that plaintiff "must avoid public interaction but he can
22 tolerate incidental public contact." (AR 18.) Dr. Donohue also found that plaintiff "has
23 a [sic] mild concentration and attention difficulties and may require instructions being
24 repeated." (AR 242.) The ALJ concluded that plaintiff is "limited to simple, repetitive
25 tasks." (AR 18.) In explaining her RFC findings, the ALJ stated that "Dr. Donohue
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27 ² A mental disorder characterized by marked swings of mood from
28 depression to hypomania but not to the degree that occurs in bipolar disorder.
Stedman's Medical Dictionary 455 (27th ed. 2000).

1 opined [plaintiff] would have difficulty interacting with people on a consistent basis in
2 a work setting and would have mild difficulty with concentration and attention. This
3 is the most restrictive assessment of record.” (AR 19.)

4 As discussed, the ALJ found that Dr. Donohue’s opinion was fully credible and
5 well-supported by relevant evidence, and consequently, afforded Dr. Donohue’s opinion
6 greater weight. (AR 18-20.) It appears that, in making this finding, the ALJ considered
7 many factors, including the amount of relevant evidence supporting the opinion, the
8 quality of the explanations, the consistency of the opinion with the record as a whole,
9 and Dr. Donohue’s area of specialization. (*Id.*) The record indicates that for purposes
10 of evaluating the plaintiff, Dr. Donohue reviewed and/or considered the following
11 information: Plaintiff’s medical records; plaintiff’s past medical, family, social and
12 environmental histories (including plaintiff’s past history of mental disorder); analyzed
13 plaintiff’s current level of functioning, and conducted a mental status examination of
14 plaintiff. (AR 240-42.) In her findings, Dr. Donohue provided thorough general
15 observations, diagnostic impressions and a medical source statement with detailed
16 explanations for her opinion. (*Id.*) For example, Dr. Donohue’s conclusion that
17 plaintiff had difficulty interacting with people was supported by evidence that plaintiff
18 had a history of easily becoming angry and verbally violent, was irritable and
19 argumentative, did not want to be around people, and almost never saw friends. (*Id.*)

20 The ALJ also noted that Dr. Donohue’s opinion is consistent with the record as
21 a whole. (AR 18-20.) For example, plaintiff established care with Dr. John Child for
22 cardiac treatment, and during the course of such treatment, plaintiff complained of
23 depressive symptoms. (AR 17-18, 302.) Dr. Child referred plaintiff to Elisa Moreno,
24 M.D., for a psychiatric consultation in February, 2008. (AR 18.) Dr. Moreno opined
25 that “plaintiff endorses symptoms of depression” and noted that plaintiff experiences
26 anxiety when he is around people and in public places. (AR 306-308.) Dr. Moreno
27 recommended that plaintiff treat his depression and anxiety with medication and regular
28 outpatient psychiatric care. (AR 308.) Dr. Donohue’s diagnosis of cyclothymia, as

1 noted above, and finding that plaintiff has difficulty interacting with people, is
2 consistent with Dr. Moreno’s opinion. (AR 242, 308.) Finally, Dr. Donohue is a
3 licensed psychologist, and thus, her opinion can be accorded greater weight as a
4 specialist in the mental health profession. 20 C.F.R. § 404.1527(d)(3). Given these
5 considerations, the ALJ properly considered the requisite factors to evaluate Dr.
6 Donohue’s opinion and accordingly afforded her opinion greater weight.

7 Plaintiff contends that the ALJ “ignor[ed] pertinent portions of Dr. Donohue’s
8 opinion regarding [plaintiff’s] need to avoid stressful situations while working” (Jt.
9 Stip. 7.) However, it is not clear that the ALJ did not include this aspect of Dr.
10 Donohue’s opinion in her RFC assessment. As explained, the ALJ concluded that
11 plaintiff was limited to simple repetitive tasks and must avoid public interaction. (AR
12 18.) This limitation appears to implicitly address plaintiff’s complaints of stress due to
13 interacting with people and working in new situations, and ostensibly amounts to an
14 acceptance of Dr. Donohue’s findings. (AR 18-19, 241-42.) Although the ALJ did not
15 specifically address this aspect of Dr. Donohue’s opinion, the ALJ’s conclusion about
16 plaintiff’s RFC appears to take into account Dr. Donohue’s opinion regarding stress
17 limitations.

18 Furthermore, in interpreting the evidence and developing the record, the ALJ
19 need not discuss every piece of evidence; rather, the ALJ need only discuss evidence
20 that is significant and probative. *Howard ex rel. Wolff v. Barnhart*, 341 F.3d 1006,
21 1012 (9th Cir. 2003); *Vincent v. Heckler*, 739 F.2d 1393, 1394-95 (9th Cir. 1984) (per
22 curiam). Also, the ALJ “need not accept the opinion of any physician, including a
23 treating physician, if that opinion is brief, conclusory, and inadequately supported by
24 clinical findings.” *Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002); see also
25 *Batson v. Comm’r of the Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2004). Here,
26 Dr. Donohue’s opinion regarding any stress limitation for plaintiff was not elaborated
27 upon elsewhere in her psychiatric evaluation. Additionally, there are no other
28 assessments in the record that support this specific limitation. (AR 19.) Although

1 plaintiff criticizes the ALJ for not specifically mentioning this portion of Dr. Donohue’s
2 opinion, plaintiff fails to show why this omission was material. The Court cannot
3 conclude that this portion of Dr. Donohue’s opinion, although relevant in the RFC
4 determination, constitutes “significant probative evidence.”

5 Moreover, to the extent the ALJ did not expressly address all of Dr. Donohue’s
6 statements regarding plaintiff’s symptoms and history, such omission was harmless
7 because it would not have affected the ALJ’s ultimate disability determination. See
8 Stout v. Comm’r, Soc. Sec. Admin., 454 F.3d 1050, 1055 (9th Cir. 2006) (an ALJ’s
9 error is harmless where such error is inconsequential to the ultimate disability
10 determination); see also Carmickle v. Comm’r of the Soc. Sec. Admin., 533 F.3d 1155,
11 1162 (9th Cir. 2008). It does not appear that the ALJ would have reached a different
12 disability determination had she expressly referenced Dr. Donohue’s opinion regarding
13 plaintiff’s ability to handle stress in a work environment. Dr. Donohue concluded that,
14 although plaintiff expressed that interacting with other people caused him stress, “[h]e
15 is able to do that for a brief period of time episodically in employment settings and has
16 worked historically on a part time basis.” (AR 241-42.) Dr. Donohue noted that
17 plaintiff had “congenial employment” while working as a host at a restaurant operated
18 by his family, but he discontinued working due to his impending heart surgery. (AR
19 241.) Taking Dr. Donohue’s opinion as whole into account, any error the ALJ may
20 have made would not have sufficiently altered the ALJ’s conclusions regarding
21 plaintiff’s RFC.

22 Finally, substantial evidence in the record supports the ALJ’s disability
23 determination. The ALJ found that the objective medical evidence failed to support
24 plaintiff’s claims of debilitating depressive symptoms. (AR 19.) The ALJ considered
25 evidence of plaintiff’s denial of depressive symptoms after hospitalization for alcohol
26 intoxication. (AR 17-19.) The hospital discharge summary stated that plaintiff was
27 calm and cooperative with no severe depression. (AR 19, 206.) The ALJ also
28 considered plaintiff’s lack of further psychiatric care. (AR 18-19.) The Court notes,

1 to the extent that plaintiff failed to seek further psychiatric care due to a lack of
2 financial resources, such failure cannot be a basis for the ALJ's decision to deny
3 disability benefits. See Gamble v. Shalala, 68 F.3d 319, 321 (9th Cir. 1995) ("We
4 certainly agree with all the other circuits that a disabled claimant cannot be denied
5 benefits for failing to obtain medical treatment that would ameliorate his condition if
6 he cannot afford that treatment."). However, in this instance, the record indicates that
7 plaintiff was provided with low and no-cost referrals for outpatient psychiatric care, but
8 there is no evidence that he took advantage of such for any further treatment. (AR 18-
9 19, 308.) Finally, Dr. Donohue noted that plaintiff complained of symptoms of
10 depression but opined that plaintiff "is not showing any evidence for depression." (AR
11 242.) Under these circumstances, the Court concludes that substantial evidence
12 supports the ALJ's determination that plaintiff is not disabled. Accordingly, remand is
13 not warranted on this basis.

14 To the extent plaintiff contends that the ALJ failed to consider all aspects of Dr.
15 Donohue's opinion in eliciting testimony from the vocational expert ("VE"), this claim
16 does not merit reversal. (Jt. Stip. 9.) In posing a hypothetical question to the VE, the
17 ALJ is required to include limitations that he found credible and supported by
18 substantial evidence. Bayliss v. Barnhart, 427 F.3d 1211, 1217-18 (9th Cir. 2005);
19 Osenbrock v. Apfel, 240 F.3d 1157, 1165 (9th Cir. 2001); Rollins v. Massanari, 261
20 F.3d 853, 857 (9th Cir. 2001). As discussed, the ALJ properly considered Dr.
21 Donohue's findings, and to the extent she failed to note a single observation, this error
22 was harmless. Since the ALJ's hypothetical questions to the VE relied on her complete
23 impairment determinations, new vocational expert testimony is unnecessary. See
24 Osenbrock, 240 F.3d at 1163.

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ORDER

IT THEREFORE IS ORDERED that Judgment be entered affirming the decision of the Commissioner of Social Security and dismissing this action with prejudice.

DATED: July 27, 2011



DAVID T. BRISTOW
UNITED STATES MAGISTRATE JUDGE

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