

O

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LAWRENCE ERIC HENRY,)	Case No. CV 11-8242-JPR
)	
Plaintiff,)	
)	MEMORANDUM OPINION AND ORDER
vs.)	AFFIRMING THE COMMISSIONER
)	
MICHAEL J. ASTRUE,)	
Commissioner of the Social)	
Security Administration,)	
)	
Defendant.)	
)	

I. PROCEEDINGS

Plaintiff seeks review of the Commissioner's final decision denying his application for Social Security Supplemental Security Income ("SSI") benefits. The parties consented to the jurisdiction of the undersigned U.S. Magistrate Judge pursuant to 28 U.S.C. § 636(c). This matter is before the Court on the parties' Joint Stipulation, filed August 27, 2012, which the Court has taken under submission without oral argument. For the reasons stated below, the Commissioner's decision is affirmed and this action is dismissed.

II. BACKGROUND

Plaintiff was born on January 1, 1989. (Administrative

1 Record ("AR") 99.) He has an 11th-grade education and no work
2 experience. (AR 49, 66, 541, 559, 587.) As a child, Plaintiff
3 received SSI benefits because of various learning disabilities
4 and behavioral disorders. (See AR 150.) After Plaintiff turned
5 18, his eligibility was reviewed under the rules for determining
6 disability in adults, and on January 9, 2008, he was found to be
7 no longer disabled under those standards. (AR 149.) Plaintiff
8 requested a review of the agency's determination; a State Agency
9 Disability Hearing Officer upheld the determination on August 13,
10 2008. (AR 61-70.)

11 Plaintiff then requested a hearing before an Administrative
12 Law Judge ("ALJ"). (AR 70.) A hearing was held on June 14,
13 2010, at which Plaintiff, who was represented by counsel,
14 appeared and testified on his own behalf. (AR 551-98.) Medical
15 Expert Dr. Betty Borden and Vocational Expert ("VE") Gregory
16 Jones also testified, as did Plaintiff's mother, Charlene Givens.
17 (AR 573-98.) In a written decision issued on July 8, 2010, the
18 ALJ determined that Plaintiff was not disabled. (AR 16-24.) On
19 August 3, 2011, the Appeals Council denied Plaintiff's request
20 for review. (AR 5-7.) This action followed.

21 **III. STANDARD OF REVIEW**

22 Pursuant to 42 U.S.C. § 405(g), a district court may review
23 the Commissioner's decision to deny benefits. The ALJ's findings
24 and decision should be upheld if they are free from legal error
25 and are supported by substantial evidence based on the record as
26 a whole. § 405(g); Richardson v. Perales, 402 U.S. 389, 401, 91
27 S. Ct. 1420, 1427, 28 L. Ed. 2d 842 (1971); Parra v. Astrue, 481
28 F.3d 742, 746 (9th Cir. 2007). Substantial evidence means such

1 evidence as a reasonable person might accept as adequate to
2 support a conclusion. Richardson, 402 U.S. at 401; Lingenfelter
3 v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007). It is more than
4 a scintilla but less than a preponderance. Lingenfelter, 504
5 F.3d at 1035 (citing Robbins v. Soc. Sec. Admin., 466 F.3d 880,
6 882 (9th Cir. 2006)). To determine whether substantial evidence
7 supports a finding, the reviewing court "must review the
8 administrative record as a whole, weighing both the evidence that
9 supports and the evidence that detracts from the Commissioner's
10 conclusion." Reddick v. Chater, 157 F.3d 715, 720 (9th Cir.
11 1996). "If the evidence can reasonably support either affirming
12 or reversing," the reviewing court "may not substitute its
13 judgment" for that of the Commissioner. Id. at 720-21.

14 **IV. THE EVALUATION OF DISABILITY**

15 People are "disabled" for purposes of receiving Social
16 Security benefits if they are unable to engage in any substantial
17 gainful activity owing to a physical or mental impairment that is
18 expected to result in death or which has lasted, or is expected
19 to last, for a continuous period of at least 12 months. 42
20 U.S.C. § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257
21 (9th Cir. 1992).

22 A. The Five-Step Evaluation Process

23 A claimant who receives SSI as a child and who remained
24 eligible for SSI for the month before the month in which he
25 turned 18 must have his eligibility for benefits redetermined
26 after turning 18. 20 C.F.R. § 416.987(a). The ALJ may find that
27 the claimant is not disabled as an adult even though the claimant
28 was previously found to be disabled as a child. Id. In

1 evaluating a claimant's continuing disability after age 18, the
2 ALJ follows a modified version of the five-step sequential
3 evaluation process used for adult claimants. Id.; § 416.920(c)-
4 (h). The ALJ does not apply the rule in § 416.920(b) to
5 determine whether the claimant is currently engaged in
6 substantial gainful activity. § 416.987(b). The ALJ does apply
7 the second through fifth steps of the sequential evaluation
8 process, however. Id. The second step requires the ALJ to
9 determine whether the claimant has a "severe" impairment or
10 combination of impairments significantly limiting his ability to
11 do basic work activities; if not, a finding of not disabled is
12 made and the claim must be denied. § 416.920(a)(4)(ii). If the
13 claimant has a "severe" impairment or combination of impairments,
14 the third step requires the ALJ to determine whether the
15 impairment or combination of impairments meets or equals an
16 impairment in the Listing of Impairments ("Listing") set forth at
17 20 C.F.R., Part 404, Subpart P, Appendix 1; if so, disability is
18 conclusively presumed and benefits are awarded.
19 § 416.920(a)(4)(iii). If the claimant's impairment or
20 combination of impairments does not meet or equal an impairment
21 in the Listing, the fourth step requires the ALJ to determine
22 whether the claimant has sufficient RFC to perform his past work;
23 if so, the claimant is not disabled and the claim is denied.
24 § 416.920(a)(4)(iv). The claimant has the burden of proving that
25 he is unable to perform past relevant work. Drouin, 966 F.2d at
26 1257. If the claimant meets that burden, a prima facie case of
27 disability is established. Id. If that happens or if the
28 claimant has no past relevant work, the ALJ then bears the burden

1 of establishing that the claimant is not disabled because he can
2 perform other substantial gainful work in the national economy.
3 § 416.920(a)(4)(v). That determination comprises the fifth and
4 final step in the sequential analysis. § 416.987(b); § 416.920.

5 B. The ALJ's Application of the Five-Step Process

6 At step one, the ALJ found that Plaintiff turned 18 on
7 December 31, 2006, was eligible for SSI benefits as a child for
8 the month preceding December 2006, and was previously found no
9 longer disabled as of January 1, 2008, based on a redetermination
10 of his disability as an adult. (AR 18.) At step two, the ALJ
11 concluded that Plaintiff had the severe impairments of borderline
12 intellectual functioning, depression, generalized anxiety
13 disorder, a history of a learning disorder, attention deficit
14 hyperactivity disorder, and asthma. (Id.) At step three, the
15 ALJ determined that Plaintiff's impairments did not meet or equal
16 any of the impairments in the Listing. (AR 18-19.) At step
17 four, the ALJ found that Plaintiff retained the RFC to perform a
18 full range of work at all exertional levels but with the
19 following nonexertional limitations: "no work requiring more than
20 simple repetitive tasks; more than brief and casual contact with
21 coworkers and supervisors; any exposure to heat, cold, hazardous
22 machinery or dangerous heights; and being responsible for the
23 safety of others." (AR 20.) The ALJ determined that Plaintiff
24 had no past relevant work. (AR 23.) At step five, the ALJ
25 concluded that jobs existed in significant numbers in the
26 national economy that Plaintiff could perform. (AR 23-24.)
27 Accordingly, the ALJ determined that Plaintiff was not disabled.
28 (AR 24.)

1 **V. DISCUSSION**

2 Plaintiff alleges that the ALJ erred in (1) rejecting the
3 opinion of Plaintiff's treating physician; (2) finding
4 Plaintiff's subjective symptom testimony not credible; and (3)
5 failing to consider the combined effects of Plaintiff's
6 impairments when determining his RFC. (J. Stip. at 3.)

7 A. The ALJ Did Not Err in His Consideration of the Opinion
8 of Plaintiff's Treating Physician

9 Plaintiff contends that the ALJ erred in rejecting his
10 treating physician Dr. Jeanne Hong's opinion that because of the
11 "culmination" of Plaintiff's impairments, "it would prove to be
12 difficult for [Plaintiff] to find and maintain employment." (J.
13 Stip. at 3-17; AR 519.) Reversal is not warranted on this basis
14 because Dr. Hong did not opine that Plaintiff was unable to work,
15 and even if she did, the ALJ properly rejected that opinion based
16 on substantial evidence in the record.

17 1. Applicable law

18 Three types of physicians may offer opinions in social
19 security cases: "(1) those who treat[ed] the claimant (treating
20 physicians); (2) those who examine[d] but d[id] not treat the
21 claimant (examining physicians); and (3) those who neither
22 examine[d] nor treat[ed] the claimant (non-examining
23 physicians)." Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995)
24 (as amended Apr. 9, 1996). A treating physician's opinion is
25 generally entitled to more weight than the opinion of a doctor
26 who examined but did not treat the claimant, and an examining
27 physician's opinion is generally entitled to more weight than
28 that of a nonexamining physician. Id.

1 The opinions of treating physicians are generally afforded
2 more weight than the opinions of nontreating physicians because
3 treating physicians are employed to cure and have a greater
4 opportunity to know and observe the claimant. Smolen v. Chater,
5 80 F.3d 1273, 1285 (9th Cir. 1996). The weight given a treating
6 physician's opinion depends on whether it was supported by
7 sufficient medical data and was consistent with other evidence in
8 the record. See 20 C.F.R. § 416.927(c)(2). If a treating
9 physician's opinion was well supported by medically acceptable
10 clinical and laboratory diagnostic techniques and is not
11 inconsistent with the other substantial evidence in the record,
12 it should be given controlling weight and rejected only for
13 "clear and convincing" reasons. See Lester, 81 F.3d at 830;
14 § 416.927(c)(2). When a treating physician's opinion conflicts
15 with other medical evidence or was not supported by clinical or
16 laboratory findings, the ALJ must provide only "specific and
17 legitimate reasons" for discounting that doctor's opinion. Orn
18 v. Astrue, 495 F.3d 625, 632 (9th Cir. 2007). Factors relevant
19 to the evaluation of a treating physician's opinion include the
20 "[l]ength of the treatment relationship and the frequency of
21 examination" as well as the "[n]ature and extent of the treatment
22 relationship" between the patient and the physician.
23 § 416.927(c)(2)(i)-(ii).

24 The ALJ may discredit treating-doctor opinions that are
25 conclusory, brief, and unsupported by the record as a whole or by
26 objective medical findings. See Batson v. Comm'r of Soc. Sec.
27 Admin., 359 F.3d 1190, 1195 (9th Cir. 2004); Thomas v. Barnhart,
28 278 F.3d 947, 957 (9th Cir. 2002) ("The ALJ need not accept the

1 opinion of any physician, including a treating physician, if that
2 opinion is brief, conclusory, and inadequately supported by
3 clinical findings.").

4 2. Relevant facts

5 Plaintiff had been seeing Dr. Jeanne Hong, a psychiatrist at
6 the Van Nuys Medical and Mental Health Services clinic, from
7 November 2008 to July 2009. (AR 519-43.) Plaintiff continued
8 going to the Van Nuys clinic through April 2010, where he was
9 treated by Dr. Willmer (first name unknown). (AR 513-18.)

10 During her initial assessment of Plaintiff, on November 22,
11 2008, Dr. Hong noted Plaintiff's history of depression, anxiety,
12 ADHD, and learning disorders. (AR 538.) She also noted that in
13 the past, his symptoms had "improve[d] on meds"; at that time,
14 Plaintiff had not been taking any medication for six months.
15 (Id. (noting Plaintiff "stopped antidepressant 6 [months] ago
16 after former psychiatrist retired").) She further noted that he
17 reported that he had scoliosis and back pain, for which he took
18 prescription Motrin, and asthma, for which he used an inhaler.
19 (AR 539.) He had a "dysphoric" mood, a "constricted" affect, was
20 "amotivational," and avoided eye contact, but otherwise his
21 mental status appeared unimpaired - in particular, his motor
22 activity was calm, his interactional style was "culturally
23 congruent," he had no apparent perceptual, thought, or behavioral
24 disturbances, and his memory and intellectual functioning were
25 unimpaired. (AR 542.)

26 From November 2008 through July 2009 Dr. Hong continued to
27 see Plaintiff approximately once a month. (AR 520-33.) During
28 those sessions she noted that Plaintiff continued to suffer from

1 anxiety and depression and reported feeling "sad" (AR 532),
2 "isolative" (AR 528), "down on [him]self," "down about life," and
3 "down thinking about human nature" (AR 523, 525-26), and he spent
4 a lot of time watching television instead of socializing (AR 521,
5 526). She also noted that as those sessions continued, Plaintiff
6 generally improved: "feels meds have been helpful overall, mood
7 is less depressed" (AR 529) (Jan. 17, 2009); Plaintiff
8 "cont[inues] to feel 'better,' less anxious" (AR 528) (Feb. 7,
9 2009); Plaintiff "states he has been feeling 'OK . . . better'
10 recently" and "feels Lexapro is helpful" (AR 526) (Mar. 8, 2009);
11 Plaintiff "reports he is doing well," has "0 problems [with]
12 sleep/appetite/energy" and "0 problems [with] meds" (AR 525)
13 (Mar. 28, 2009); Plaintiff "states that he has been doing fairly
14 well, 0 acute issues," continued to have "0 problems [with]
15 sleep/appetite/energy" and "0 problems [with] meds" (AR 523)
16 (Apr. 26, 2009); Plaintiff "states that in general [he is] doing
17 well" and "feels meds have been helpful for mood/anxiety,"
18 "denies overt depression" and "sleep/appetite/energy [are]
19 intact," and he suffered no side effects from his medications (AR
20 522) (May 21, 2009); Plaintiff "states he has been doing fairly
21 well" and "denies depressed mood, denies problems [with]
22 sleep/appetite/energy" (AR 521) (June 21, 2009); and Plaintiff
23 "started on Lexapro, has since shown improvement in mood and
24 anxiety" (AR 520) (July 26, 2009). During all of those sessions,
25 Plaintiff's mood was noted as "better," "good," or "OK" and his
26 affect was always noted as "euthymic." (AR 520-29.)

27 On July 26, 2009, Dr. Hong wrote the following letter "to
28 whom it may concern":

1 This letter is to state that Lawrence Henry is currently
2 a patient at our clinic. He has been attending
3 appointments at this clinic since 11/22/08 on a monthly
4 basis. Lawrence has a history of Learning Disorder,
5 ADHD. He had IEPs in the past secondary to his problems
6 with dyslexia, reading skills, comprehension, and
7 spelling. He has a history of brain injury resulting
8 from events in his childhood. He also has several other
9 psychiatric diagnoses including Major Depressive
10 Disorder, moderate, and Generalized Anxiety Disorder.
11 His symptoms include depressed mood, poor self-esteem,
12 social anxiety, chronic, generalized worrying. He is
13 taking Lexapro 15 mg po Qdaily [sic] to treat these
14 symptoms. I also understand that he has a history of
15 chronic back pain and has difficulty with prolonged
16 periods of standing; he takes Motrin for his pain.
17 Because of the culmination of all of these factors, I
18 feel that it would prove to be difficult for Lawrence to
19 find and maintain employment.

20 (AR 519.)

21 From August 2009 until April 2010, Plaintiff continued to go
22 to the Van Nuys clinic, where he was seen by Dr. Willmer.
23 Similarly to Dr. Hong, Dr. Willmer noted that Plaintiff continued
24 to suffer from depression and anxiety, and his mood during their
25 first three sessions was "guarded" and "dysthymic." (AR 513-18.)
26 But Dr. Willmer also noted that Plaintiff reported he was "doing
27 good, life is fine" (AR 517), and during their later sessions he
28 was "casual, engaged, conversant, smiling/laughing, [and]

1 pleasant" (AR 513). In November 2009 Plaintiff reported that he
2 felt the Lexapro was not working, and in February 2010 Plaintiff
3 reported that his anxiety had "increased" after he stopped taking
4 his medications for "a few weeks." (AR 514-15.) In April 2010,
5 however, Dr. Willmer noted that Plaintiff "would like to
6 [increase] Lexapro" to help with his symptoms, and he described
7 Plaintiff's depression as "mild" and his anxiety disorder as
8 "stable." (AR 513.)

9 On May 15, 2008, medical consultant Dr. Greta Johnson issued
10 a Mental Residual Functional Capacity Assessment. (AR 409.) In
11 it, she found Plaintiff "moderately limited" in the ability to
12 "understand and remember detailed instructions," "carry out
13 detailed instructions," "maintain attention and concentration for
14 extended periods," "perform activities within a schedule,
15 maintain regular attendance, and be punctual within customary
16 tolerances," "complete a normal workday and workweek without
17 interruptions from psychologically based symptoms and to perform
18 at a consistent pace without an unreasonable number and length of
19 rest periods," "accept instructions and respond appropriately to
20 criticism from supervisors," and "respond appropriately to
21 changes in the work setting." (AR 409-10.) In all other
22 categories, Dr. Johnson found that Plaintiff was "not
23 significantly limited." (Id.) She also found that Plaintiff
24 "has adequate function to do [simple repetitive tasks]." (AR
25 411.)

26 During the June 14, 2010 hearing, the ALJ took testimony
27 from Dr. Borden, who had reviewed the record. She testified that
28 Plaintiff had the following impairments: "borderline intellectual

1 functioning," "a history of depression that recently has been
2 treated as a recurrent, moderate, major depressive disorder,"
3 "generalized anxiety disorder," and "a history of learning
4 disorder and attention deficit, hyperactivity disorder, with no
5 recent treatment for the ADHD." (AR 573.) She further testified
6 that Plaintiff's impairments either individually or in
7 combination did not meet or equal an impairment in the Listing,
8 but they did create functional limitations. (Id.) Specifically,
9 Dr. Borden noted the following limitations:

10 The Claimant is unable to remember and carry out detailed
11 instructions. The Claimant would have a significant
12 impairment in social interaction. The Claimant would be
13 able to have a brief, casual contact with supervisors and
14 co-workers, but not with [the] public.

15 (AR 573-74.)

16 3. Analysis

17 Plaintiff asserts that the ALJ erred in not properly
18 crediting Dr. Hong's July 26, 2009 opinion that "it would prove
19 to be difficult for [Plaintiff] to find and maintain employment."
20 (J. Stip. at 3-17.) As an initial matter, it is not at all clear
21 that Dr. Hong's note indicated that Plaintiff was unable to work.
22 She stated only that Plaintiff would have a "difficult" time
23 finding and maintaining work; she did not state that it was
24 impossible for him to work or even that he should be precluded
25 from performing specific types of work. Thus, the ALJ could have
26 taken the letter into account and still found Plaintiff able to
27 work. Indeed, the ALJ agreed with Dr. Hong's diagnosis of
28 anxiety and depression as well as a history of learning disorder

1 and ADHD. (AR 18, 519.)

2 Moreover, consistent with Dr. Hong's and Dr. Willmer's
3 treatment notes, the ALJ correctly noted that despite Plaintiff's
4 conditions he "admitted he was feeling well or fine and doing
5 better," he "stated that he had shown improvement in mood and
6 anxiety due to therapy and medications," and he "denied any
7 problems with sleep, appetite or energy." (AR 21.) The ALJ also
8 correctly noted that Dr. Hong's letter made "no specific residual
9 functional capacity assessment," and "the clear progress and
10 improvement [Plaintiff] has made with treatment is not taken into
11 account" in her work determination.¹ (Id.) To the extent Dr.
12 Hong's letter failed to recognize Plaintiff's improvement, it was
13 appropriate for the ALJ to discount it on that basis. See
14 Rollins v. Massanari, 261 F.3d 853, 856 (9th Cir. 2005) (ALJ may
15 reject treating physician's assessment of plaintiff's limitations
16 when physician's notes and other recorded observations contradict
17 assessment). He was also entitled to reject it because the
18 statement concerning work was brief and conclusory. See Batson,
19 359 F.3d at 1195; Thomas, 278 F.3d at 957.

20 The Court must consider the ALJ's decision in the context of
21 "the entire record as a whole," and if the "evidence is
22 susceptible to more than one rational interpretation, the ALJ's
23 decision should be upheld." Ryan v. Comm'r of Soc. Sec., 528
24 F.3d 1194, 1198 (9th Cir. 2008) (internal quotation marks

25
26 ¹The ALJ incorrectly stated that the letter was dated July
27 26, 2008. (AR 21.) It was dated July 26, 2009. The date the
28 ALJ gave appears to be a typographical error and is harmless.
See Stout v. Comm'r, Soc. Sec. Admin., 454 F.3d 1050, 1055 (9th
Cir. 2006) (nonprejudicial or irrelevant mistakes harmless).

1 omitted). Plaintiff selectively points out places in the
2 treatment notes where Plaintiff complained of ongoing depression
3 and anxiety (see J. Stip. at 7-9), but read in the context of the
4 record as a whole, Plaintiff's symptoms clearly were controllable
5 with medication, he showed improvement over time, and the ALJ
6 reasonably found that his limitations did not completely prevent
7 him from being able to work.

8 Plaintiff further argues that the ALJ erred in rejecting Dr.
9 Johnson's opinion, which he alleges was "consistent with the
10 opinions expressed by Dr. Hong." (J. Stip. at 11.) But the
11 ALJ's RFC limiting Plaintiff to "no work requiring more than
12 simple repetitive tasks," no "more than brief and casual contact
13 with coworkers and supervisors," and no "being responsible for
14 the safety of others" is in fact consistent with Dr. Johnson's
15 evaluation that Plaintiff was "moderately limited" in certain
16 functions, such as remembering detailed instructions and
17 interacting with the public. (AR 409-10.) Nowhere did Dr.
18 Johnson find that Plaintiff was incapable of working; to the
19 contrary, like the ALJ, she found that Plaintiff was capable of
20 performing simple, repetitive tasks. (See AR 411 (finding
21 Plaintiff "has adequate function to do SRT"); AR 23 (finding
22 Plaintiff can perform "no work requiring more than simple
23 repetitive tasks").)

24 Plaintiff also argues that the ALJ erred in "reject[ing] the
25 opinions and assessments of Dr. Hong in favor of the . . .
26 testimony of the medical advisor, Dr. Borden." (J. Stip. at 12.)
27 As noted above, however, the ALJ did not "reject" Dr. Hong's
28 opinions - his assessment of Plaintiff's abilities was consistent

1 with them. Moreover, the ALJ did not err in giving Dr. Borden's
2 opinion "significant weight" because, as the ALJ correctly noted,
3 it was "well supported by the evidence." (AR 23.) Like Dr.
4 Hong, Dr. Borden recognized that Plaintiff had borderline
5 intellectual functioning, major depression, generalized anxiety
6 disorder, and a history of learning disorders and ADHD. (Compare
7 AR 573 with AR 519.) Like Dr. Johnson, Dr. Borden also
8 recognized that because of his disorders, Plaintiff would have
9 difficulty following detailed instructions and interacting with
10 the public but could perform simple, repetitive tasks. (Compare
11 AR 573 with AR 409-11.) If anything, Dr. Borden's assessment of
12 Plaintiff's capacities may have been more restrictive than Dr.
13 Johnson's, because Dr. Borden found Plaintiff would have a
14 "significant impairment" in social interaction, whereas Dr.
15 Johnson found that Plaintiff was only "moderately limited" in
16 certain social abilities. (See AR 573, 409-10.) Dr. Borden's
17 opinion was also consistent with the other medical opinions of
18 record. (See, e.g., AR 468 (Dr. Yang, noting that Plaintiff's
19 ability to perform "simple tasks" was "unimpaired"); AR 464 (Dr.
20 Colonna, noting that Plaintiff can "understand, remember, and
21 carry out short and simplistic instructions without
22 difficulty".))

23 Plaintiff contends that Dr. Borden's testimony was also not
24 reliable because she was "unable to hear all of the testimony
25 presented during the hearing" and "was also not familiar with the
26 standard deviation scoring for the sub-scales for the WAIS III"
27 IQ test. (J. Stip. at 13-17.) Plaintiff fails to demonstrate
28 how either of these contentions is true or relevant. First, the

1 only information Dr. Borden said she had difficulty hearing was
2 Plaintiff's statement that he picked up his work at the West
3 Valley Occupational Center and completed it at home, rather than
4 attending classes in person. (AR 584.) The ALJ subsequently
5 clarified that information for Dr. Borden, and she stated that it
6 did not change her opinion. (AR 585.) Plaintiff does not
7 identify what additional information he alleges Dr. Borden failed
8 to hear or how it may have affected her opinion. Indeed, the
9 doctor answered most of the questions without asking for them to
10 be repeated, indicating that in general she could hear. (See,
11 e.g., AR 573-80.) Second, as to Plaintiff's contention regarding
12 the IQ scores, it is not clear from the transcript that Dr.
13 Borden testified incorrectly; Plaintiff's counsel's questions
14 were unclear (see, e.g., AR 576-79), and any misstatements Dr.
15 Borden may have made were likely in response to Plaintiff's
16 counsel's confusing line of questioning, which the ALJ
17 interrupted several times to clarify (AR 575, 578). Moreover,
18 because Plaintiff does not contest the ALJ's finding that his IQ
19 does not meet an impairment in the Listing (see AR 19; J. Stip.
20 at 13-17), it is unclear how the standard deviation of his IQ
21 scores is relevant.

22 Thus, the ALJ did not err in relying on Dr. Borden's
23 testimony. See Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th
24 Cir. 2001) (opinion of nonexamining medical expert "may
25 constitute substantial evidence when it is consistent with other
26 independent evidence in the record"). Reversal is therefore not
27 warranted on this basis.

1 B. The ALJ Did Not Improperly Discount Plaintiff's
2 Subjective Symptom Testimony

3 Plaintiff next argues that the ALJ erred in determining
4 Plaintiff's credibility because his opinion included only a
5 "generic discussion of the factors which are utilized in a
6 credibility finding" but "no statement that the Claimant is or is
7 not credible." (J. Stip. at 25-30.) Reversal is not warranted
8 on this basis, however, because the ALJ made specific findings as
9 to Plaintiff's credibility that were consistent with the medical
10 evidence of record.

11 1. Applicable law

12 An ALJ's assessment of pain severity and claimant
13 credibility is entitled to "great weight." See Weetman v.
14 Sullivan, 877 F.2d 20, 22 (9th Cir. 1989); Nyman v. Heckler, 779
15 F.2d 528, 531 (9th Cir. 1986). When the ALJ finds a claimant's
16 subjective complaints not credible, the ALJ must make specific
17 findings that support the conclusion. See Berry v. Astrue, 622
18 F.3d 1228, 1234 (9th Cir. 2010). Absent affirmative evidence of
19 malingering, the ALJ must give "clear and convincing" reasons for
20 rejecting the claimant's testimony. Lester, 81 F.3d at 834. "At
21 the same time, the ALJ is not required to believe every
22 allegation of disabling pain, or else disability benefits would
23 be available for the asking, a result plainly contrary to 42
24 U.S.C. § 423(d)(5)(A)." Molina v. Astrue, 674 F.3d 1104, 1112
25 (9th Cir. 2012) (internal quotation marks and citation omitted).
26 If the ALJ's credibility finding was supported by substantial
27 evidence in the record, the reviewing court "may not engage in
28 second-guessing." Thomas, 278 F.3d at 959.

1 2. Relevant facts

2 At the hearing, Plaintiff testified that he attended high
3 school through the 11th grade and "almost" finished but did not
4 because "[t]he work was very difficult, and I couldn't function
5 very well." (AR 559.) He stated that he was currently "trying
6 to get my GED" "through different kind of programs" but was not
7 presently enrolled because the classes at the program he wished
8 to attend were full. (AR 560, 569.) He testified that he lived
9 at home and during the day he "just sit[s] down a lot" and
10 "[doesn't] really do anything." (AR 561.) He stated that he did
11 not have friends or socialize because he didn't "have good social
12 skills," but he "sometimes" left the house on his own and took
13 the bus to go to fast food restaurants. (AR 561-62.) He also
14 ran "regular errands" with his mother and tried to help with
15 chores, but "I get sort of frustrated when I try to do some of
16 the chores and I can't do it right." (AR 563.) He stated he
17 could do "a little sweeping a little bit" but "standing up is
18 very difficult for me." (Id.) Plaintiff testified that he spent
19 his time "sometimes" listening to classical music, watching
20 television, and reading, although he was not able to read very
21 well. (AR 563-64.) He stated that in the past he tried to apply
22 for "grocery jobs" but the stores were not hiring and it was
23 difficult for him to fill out the applications by himself on a
24 computer. (AR 565.)

25 In his written opinion, the ALJ noted that Plaintiff
26 testified that he was in special education while in
27 school and only finished the 11th grade. He is still
28 working on trying to obtain a GED. So far, he has not

1 been successful. He lives with his mother. He has
2 looked for work but it was difficult filling out the
3 applications. The claimant's mother testified that he
4 received services from the Regional Center but only
5 through the 5th grade when they were told he did not need
6 additional services.

7 (AR 20.) The ALJ then summarized the medical evidence of record,
8 noting that it showed Plaintiff had borderline intellectual
9 functioning and had been diagnosed with ADHD, "oppositional-
10 defiant disorder, anxiety disorder, and various depressive
11 disorders." (Id.) Consistent with the medical evidence, as
12 outlined above, the ALJ further noted that Plaintiff's depression
13 and anxiety showed improvement over time with counseling and
14 medication, many of the treatment notes in the record showed that
15 Plaintiff often reported he was doing well and his mood appeared
16 normal, and several doctors had opined that Plaintiff was capable
17 of performing simple, repetitive tasks. (AR 21.)

18 Regarding Plaintiff's alleged physical limitations, the ALJ
19 wrote:

20 The remaining evidence shows that for the past few years
21 the claimant has received occasional conservative
22 treatment for asthma, low back pain, and various minor
23 ailments [(AR 545-50)]. Notably, he was described as
24 doing well by his primary care physician on July 14, 2009
25 [(AR 547)]. His asthma attacks and low back pain were
26 described as being only occasional in nature and
27 frequency. A consultative internal examination on
28 December 13, 2007 by Jagvinder Singh, M.D. noted that

1 although the claimant gave a history of scoliosis there
2 were no physical signs or limitations discernible [(AR
3 458)]. Dr. Singh felt that the claimant could perform a
4 full range of medium work.

5 (AR 22.) Plaintiff does not challenge these findings.

6 After reciting the standards applicable to an ALJ's
7 credibility finding, the ALJ made the following determination:

8 The above discussed evidence demonstrates that the
9 claimant's level of mental and emotional functioning has
10 significantly improved since the most recent favorable
11 determination. Although the claimant still has
12 borderline intellectual functioning his symptoms of
13 anxiety and depression have clearly responded to
14 medication and therapy. His symptoms have only increased
15 when he was non-compliant with treatment. In addition to
16 the level of functioning noted by Dr. Colonna cited
17 above, the claimant also told Dr. Yang that he was able
18 to do some household chores, errands, shopping, cooking,
19 go places alone, visit with family and friends, and
20 perform all self-care activities independently [(AR
21 467)]. At the hearing, the claimant was able to respond
22 to all questions put to him at the hearing, even
23 multifaceted questions. The medical expert testified
24 that the record supports claimant's ability to perform
25 simple repetitive tasks involving no more than brief and
26 casual contact with coworkers and supervisors, and no
27 contact with the general public. The undersigned gives
28 this opinion significant weight as it is well supported

1 by the evidence. Regarding the claimant's physical
2 functioning, there is insufficient objective evidence to
3 support the claimant's allegation of scoliosis despite
4 his occasional complaints of low back pain. However,
5 even if claimant were limited to light or sedentary work
6 because of such condition, a substantial number of the
7 jobs identified by the vocational expert could still be
8 performed, per his testimony. The claimant otherwise
9 would only be subject to environmental restrictions
10 relating to his asthma condition as determined by the
11 State Agency consultant [(AR 401-08)].

12 (AR 23.)

13 3. Analysis

14 Reversal is not warranted based on the ALJ's alleged failure
15 to make proper credibility findings or properly consider
16 Plaintiff's subjective symptoms. The ALJ made several specific
17 findings supporting his evaluation of Plaintiff's subjective
18 symptoms. As noted above, the record showed that Plaintiff's
19 mental impairments did not limit his ability to perform simple,
20 repetitive tasks; they improved over time with counseling and
21 medication; and they got worse only when Plaintiff stopped taking
22 his medication. As an initial matter, the ALJ did not
23 necessarily reject Plaintiff's testimony, because his decision is
24 largely consistent with it and he never expressly stated that he
25 did not find Plaintiff credible, either in whole or in part.
26 Plaintiff did not testify that he was incapable of working.
27 Rather, he testified that he was trying to get his GED -
28 indicating that he was capable of learning and doing schoolwork

1 independently - and he was able to leave the house on his own to
2 go to fast food restaurants, do simple chores around the house,
3 and run errands with his mother. (AR 559-63.) He also testified
4 that he tried to apply for jobs, indicating that he was capable
5 and willing to work, and the only reason he did not pursue those
6 jobs was that he had trouble filling out the applications on a
7 computer. (AR 565.) The ALJ's RFC finding that Plaintiff was
8 capable of performing simple, repetitive tasks appears consistent
9 with Plaintiff's testimony.²

10 Moreover, to the extent Plaintiff's testimony conflicted
11 with the medical evidence, the ALJ properly discounted it. See,
12 e.g., 20 C.F.R. § 416.929(c)(4)(iv) (ALJ may consider
13 effectiveness of medication in evaluating severity and limiting
14 effects of an impairment); SSR 96-7p, 1996 WL 374186, at *6
15 ("medical signs and laboratory findings that . . . demonstrate
16 worsening or improvement of the underlying medical condition . .
17 . may also help an adjudicator to draw appropriate inferences
18 about the credibility of an individual's statements");
19 Tonapetyan, 242 F.3d at 1148 (credibility determination based on,
20 among other things, plaintiff's "tendency to exaggerate" proper
21 when supported by "substantial evidence"); Johnson v. Shalala, 60
22 F.3d 1428, 1434 (9th Cir. 1995) (holding that "contradictions

23
24 ²To the extent Plaintiff's second argument can be
25 interpreted as challenging the ALJ's rejection of Plaintiff's
26 mother's testimony (see J. Stip. at 28-29 (discussing Plaintiff's
27 mother's testimony); but see J. Stip. at 3, 25 (framing second
28 issue as "whether the ALJ erred in determining the credibility of
the Plaintiff" (emphasis added)), she testified only that
Plaintiff no longer received "services from Regional Center"
because "they said he didn't need it anymore." (AR 572.) The
ALJ's findings are not inconsistent with her testimony.

1 between claimant's testimony and the relevant medical evidence"
2 provided clear and convincing reasons for ALJ to reject
3 plaintiff's subjective symptom testimony).

4 The ALJ noted that the record showed Plaintiff "was able to
5 do some household chores, errands, shopping, cooking, go places
6 alone, visit with family and friends, and perform all self-care
7 activities independently." (AR 23.) This observation was
8 consistent with the evidence of record (see AR 460 (noting
9 Plaintiff "states that he is depressed because his friends are
10 all gone"); 467-68 (noting Plaintiff is able to "eat, dress and
11 bathe independently," "is able to do some household chores,
12 errands, shopping and cooking," "manages his own money," and
13 "visits with family and friends, and gets along adequately with
14 others"), and the ALJ was entitled to rely on that evidence in
15 rejecting Plaintiff's testimony that he did not engage in those
16 activities to the extent that testimony implied Plaintiff was
17 unable to do so. See Valentine v. Comm'r, Soc. Sec. Admin., 574
18 F.3d 685, 693 (9th Cir. 2009) (ALJ properly considered claimant's
19 daily activities in finding claimant's "claims about the severity
20 of his limitations were exaggerated"). The ALJ was also entitled
21 to rely on his personal observations that "[a]t the hearing, the
22 claimant was able to respond to all questions put to him . . .
23 even multifaceted questions." (AR 23); see Thomas, 278 F.3d at
24 960 (ALJ properly relied on claimant's "demeanor at the hearing"
25 in rejecting her credibility); SSR 96-7p, 1996 WL 374186, at *5
26 ("[T]he adjudicator may also consider his or her own recorded
27 observations of the individual as part of the overall evaluation
28 of the credibility of the individual's statements.").

1 Although Plaintiff does not appear to challenge the ALJ's
2 finding regarding the effects of his scoliosis and back pain, to
3 the extent he does, substantial evidence in the record supported
4 the ALJ's finding that Plaintiff's alleged scoliosis and back
5 problems were not disabling. (AR 22-23; see AR 458 (noting "no
6 physical signs or limitations" of scoliosis), 468 (noting that
7 Plaintiff "tries to exercise and play basketball").) Moreover,
8 the ALJ correctly noted that even if Plaintiff were limited to
9 light or sedentary work because of his scoliosis, there were
10 ample jobs in the regional or national economy that he could
11 perform. (AR 23; see AR 589-90.) Thus, even if the ALJ erred in
12 holding that Plaintiff's scoliosis did not prevent him from
13 performing all levels of work, the error was harmless. See Stout
14 v. Comm'r, Soc. Sec. Admin., 454 F.3d 1050, 1055 (9th Cir. 2006)
15 (nonprejudicial or irrelevant mistakes harmless).

16 Plaintiff appears to fault the ALJ for not specifically
17 writing the words "the claimant is not credible because . . ."
18 (see J. Stip. at 27 ("without a statement that the Claimant
19 either is or is not credible, this is not a proper credibility
20 analysis")), but as long as the ALJ's analysis of the evidence was
21 supported by the record, to the extent the ALJ rejected
22 Plaintiff's testimony he need not recite any "magic words" in
23 doing so. See Magallanes v. Bowen, 881 F.2d 747, 755 (9th Cir.
24 1989) (ALJ need not "recite the magic words, 'I reject,'" for
25 reviewing court to draw inference from ALJ's decision that ALJ
26 rejected particular evidence). Because the ALJ's evaluation of
27 Plaintiff's subjective symptom testimony was supported by
28 substantial evidence in the record, reversal is not warranted on

1 this basis.

2 C. The ALJ Did Not Improperly Discount the Combined
3 Effects of Plaintiff's Impairments in Formulating the
4 RFC

5 Plaintiff's final contention is that the ALJ erred by not
6 properly addressing the combined effects of all of Plaintiff's
7 impairments. (J. Stip. at 36-38.) Specifically, Plaintiff
8 contends that the ALJ did not consider his anxiety in formulating
9 the RFC and did not take into account Dr. Johnson's opinion that
10 he was "moderately limited" in the ability to "understand and
11 remember detailed instructions," "carry out detailed
12 instructions," "maintain attention and concentration for extended
13 periods," "perform activities within a schedule, maintain regular
14 attendance, and be punctual within customary tolerances,"
15 "complete a normal workday and workweek without interruptions
16 from psychologically based symptoms and to perform at a
17 consistent pace without an unreasonable number and length of rest
18 periods," "accept instructions and respond appropriately to
19 criticism from supervisors," and "respond appropriately to
20 changes in the work setting." (Id.; AR 409-10.) Reversal is not
21 warranted on this basis because the ALJ's RFC took Plaintiff's
22 anxiety into account and was consistent with Dr. Johnson's
23 diagnosis.

24 In conducting an RFC assessment, the ALJ must consider the
25 combined effects of an applicant's medically determinable
26 impairments on the applicant's ability to perform sustainable
27 work. 42 U.S.C. § 423(d)(2)(B); Macri v. Chater, 93 F.3d 540,
28 545 (9th Cir. 1996). The ALJ must consider all of the relevant

1 medical opinions as well as the combined effects of all of the
2 plaintiff's impairments, even those that are not "severe." 20
3 C.F.R. § 416.945(a); Celaya v. Halter, 332 F.3d 1177, 1182 (9th
4 Cir. 2003). "[A]n RFC that fails to take into account a
5 claimant's limitations is defective." Valentine, 574 F.3d at
6 690. The ALJ must determine a claimant's limitations on the
7 basis of "all relevant evidence in the record." Robbins, 466
8 F.3d at 883.

9 As noted above, the ALJ's RFC finding was consistent with
10 the medical evidence of record. The ALJ specifically recognized
11 that Plaintiff had been diagnosed with "a generalized anxiety
12 disorder" (AR 18), and he took that into account by limiting
13 Plaintiff to performing "simple repetitive tasks," no more than
14 "brief and casual contact with coworkers and supervisors," and no
15 "being responsible for the safety of others" (AR 20). The ALJ's
16 RFC finding was also consistent with Dr. Johnson's diagnosis
17 because, as outlined above, it accounted for Plaintiff's
18 "moderate" limitations in social functioning and the ability to
19 complete complex tasks by limiting Plaintiff to only "brief and
20 casual" contact with others and restricting him to performing
21 only simple, repetitive tasks. Moreover, as noted above, Dr.
22 Johnson did not find Plaintiff incapable of working - to the
23 contrary, like the ALJ, she found Plaintiff was capable of
24 performing simple, repetitive tasks. (See AR 411.) To the
25 extent Plaintiff argues that the ALJ should have imposed further
26 restrictions in his RFC, the record does not support the
27 inclusion of any additional restrictions. See Rollins, 261 F.3d
28 at 857 ("Because the ALJ included all of the limitations that he

1 found to exist, and because his findings were supported by
2 substantial evidence, the ALJ did not err in omitting the other
3 limitations that [plaintiff] had claimed, but had failed to
4 prove."). Reversal is therefore not warranted on this basis.

5 **VI. CONCLUSION**

6 Consistent with the foregoing, and pursuant to sentence four
7 of 42 U.S.C. § 405(g),³ IT IS ORDERED that judgment be entered
8 AFFIRMING the decision of the Commissioner and dismissing this
9 action with prejudice. IT IS FURTHER ORDERED that the Clerk
10 serve copies of this Order and the Judgment on counsel for both
11 parties.

12
13 DATED: October 2, 2012

JEAN ROSENBLUTH

JEAN ROSENBLUTH
U.S. Magistrate Judge

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

³This sentence provides: "The [district] court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing."