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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JEFFREY TINSELY,

Case No. 1:15-cv-00056-SKO

Plaintiff,

ORDER RE PLAINTIFF'S COMPLAINT

v.

(Doc. No. 1)

CAROLYN W. COLVIN,
Acting Commissioner of Social Security,

Defendant.

INTRODUCTION

Plaintiff Jeffrey Tinsely ("Plaintiff") seeks judicial review of a final decision of the Commissioner of Social Security (the "Commissioner" or "Defendant") denying his application for Supplemental Security Income ("SSI") pursuant to Title XVI of the Social Security Act. 42 U.S.C. §§ 405(g); 1383. The matter is currently before the Court on the parties' briefs, which were submitted, without oral argument, to the Honorable Sheila K. Oberto, United States Magistrate Judge.¹

¹ The parties consented to the jurisdiction of a U.S. Magistrate Judge. (Docs. 8, 9.)

1 **FACTUAL BACKGROUND**

2 Plaintiff filed an application for SSI on January 31, 2011, alleging disability beginning on
3 December 31, 2003, caused by mental illness, Hepatitis C, obesity, and degenerative disc disease.
4 (Administrative Record ("AR") 257, 268.) Plaintiff was born in 1960, and did not complete high
5 school or obtain a GED certification. (AR 37, 568.)

6 **A. Relevant Medical Background**

7 **1. State Agency Examining Physician**

8 On August 19, 2006, Plaintiff underwent a consultative mental examination by Manny
9 Castillo, M.D., a Board Certified Psychiatrist, in connection with a prior claim. (AR 506.)
10 Plaintiff reported suffering from auditory hallucinations which told him to harm himself or "do
11 stupid things" that would "get him into trouble." (AR 506.) Plaintiff explained he feels paranoid,
12 exhibits hostility toward people, and experiences mood lability. (AR 506.) He reported receiving
13 psychiatric treatment on and off since the age of 18; and despite previous drug possession charges,
14 he denied having a history of substance abuse. (AR 506.) Plaintiff was confined at a psychiatric
15 facility in 1989, and confined at a California medical correctional facility in Vacaville for one year
16 until he was released in May 2006. (AR 507.) During his confinement, he was "started on a
17 number of psychiatric medications," and at the time he was examined by Dr. Castillo, he reported
18 receiving mental health services at the Parole Outpatient Clinic. (AR 507.)

19 During the mental status examination, Dr. Castillo reported Plaintiff's social interaction
20 with him was normal; Plaintiff was able to recall seven digits forward and three digits backward;
21 and his attention span was normal. (AR 508.) Dr. Castillo described Plaintiff as not easily
22 distracted and noted Plaintiff needed no structure from him during the evaluation. (AR 508.)
23 Plaintiff was able to follow both a three-stage verbal command and a visual command. (AR 508.)
24 Plaintiff's daily activities included eating, sleeping, and walking; he reported being unable to use
25 public transportation independently because he was afraid of getting lost. (AR 509.)

1 Dr. Castillo diagnosed Plaintiff with Schizoaffective Disorder and assigned him a Global
2 Assessment of Functioning ("GAF") score of 50.² (AR 509.) Dr. Castillo found no limitation in
3 Plaintiff's ability to socially interact with others at an age-appropriate level or understand
4 instructions, and he indicated Plaintiff was able to avoid normal hazards in the workplace.
5 (AR 509-10.) Dr. Castillo noted marked limitations in Plaintiff's ability to sustain an ordinary
6 routine without sustained supervision and to complete simple tasks. Dr. Castillo opined Plaintiff
7 had extreme limitations in his abilities to complete detailed or complex tasks; concentrate for at
8 least two-hour increments; and maintain a regular work schedule. (AR 510.) Dr. Castillo also
9 opined Plaintiff was incapable of handling his own funds. (AR 510.)

10 **2. Parole Outpatient Clinic Social Worker Notes**

11 In April 2011, Plaintiff was seen at the Parole Outpatient Clinic for evaluation. (AR 701-
12 03.) He was diagnosed with depressive disorder, in full remission, and was assigned a GAF score
13 of 85. (AR 701.) He was evaluated by Paul Crenshaw, L.C.S.W., who noted Plaintiff had been
14 released from prison the previous month following a four-year term for narcotic possession.
15 (AR 701.) Upon mental status evaluation, Mr. Crenshaw noted as follows:

16 The parolee comes in appropriately dressed and groomed and on time for this
17 interview. His speech was goal-directed. His eye contact was good. His attention
18 and concentration were on task, with no noted distractibility. His cognitive
19 processes appeared clear and linear. His mood was euthymic. His affect was full
20 range and appropriate to content. The parolee denies current suicidal or homicidal
21 ideation. His intellect appeared average for this population. He at no point
22 appeared to be responding to internal stimuli and there were no noted perceptual
23 disturbances. Overall, the parolee was jovial and forthcoming with information.
24 He was spontaneous in his speech and showed no signs of psychiatric disorder.

25 (AR 702.) Plaintiff's treatment plan was summarized by Mr. Crenshaw:

26 The parolee will not be referred to psychiatry for medication, as he has not been on
27 medication for approximately one year. He was identified as CCCMS upon his
28 discharge from CRC; however, he appears to have had no symptoms or difficulties

29 ² The GAF scale is a tool for "reporting the clinician's judgment of the individual's overall level of functioning." Am.
30 Psychiatric Ass'n, *Diagnosis & Statistical Manual of Mental Disorders* 32 (4th ed. 2000). The clinician uses a scale of
31 zero to 100 to consider "psychological, social, and occupational functioning on a hypothetical continuum of mental
32 health- illness," not including impairments in functioning due to physical or environmental limitations. *Id.* at 34. A
33 GAF score between 41 and 50 indicates serious symptoms or serious difficulty in social, occupational, or school
34 functioning. *Id.*

1 for the past year of a psychiatric nature. Therefore, the parolee will be seen
2 according to PC-290 registrant guidelines.

3 (AR 702.)

4 In May 2011, Plaintiff again saw Mr. Crenshaw who noted Plaintiff's mental status was
5 within normal limits, and Plaintiff was stable and compliant. (AR 698.) In July 2011, Mr.
6 Crenshaw reported Plaintiff continued to do well, he was stable and compliant with the parole
7 rules, and he was stable without medication intervention. (AR 698.) In September 2011, Plaintiff
8 checked-in and reported he had obtained a job at a local diesel mechanics shop, and he was happy
9 to be working. Plaintiff was observed to be in a good mood and appeared stable. (AR 698.) At
10 an appointment in December 2011, Plaintiff reported to Mr. Crenshaw that he was working full
11 time "and loving it." (AR 697.) Mr. Crenshaw noted Plaintiff was stable and doing well; his
12 mood was good and he had no psychiatric complaints; and he was compliant with the conditions
13 of his parole agent. (AR 697.) In February 2012, Plaintiff reported to Mr. Crenshaw that he was
14 still working at the tire shop, stated it was hard but honest work, and indicated he felt good about
15 his situation. (AR 697.) In April 2012, Plaintiff indicated he had completed his restitution
16 payments and that his parole agent had agreed to consider his case for discharge review; he
17 planned to move to Texas with his wife, who is a local bus driver. (AR 697.)

18 In May 2012, Plaintiff reported to Mr. Crenshaw that he was working hard and saving
19 money; although Plaintiff had paid off his restitution, he had to pay another \$600 for court costs.
20 (AR 697.) Plaintiff indicated he was working at Triangle Trucking 40 hours per week, and he and
21 his family were doing well. (AR 697.) Mr. Crenshaw indicated Plaintiff appeared stable and
22 compliant, and his mental status was within normal limits. (AR 696-97.)

23 At an appointment in July 2012, Plaintiff reported to Mr. Crenshaw that he and his wife
24 were waiting to find out if his transfer to Arkansas had been approved; his wife had a job there,
25 they had purchased land and a mobile home, and they were excited and happy. (AR 696.)

26 In September 2012, Plaintiff reported that his transfer to Arkansas was denied, his wife had
27 already moved there, but he was willing to wait another six months. (AR 696.) Plaintiff's mood
28 was observed to be good. (AR 696.) In October 2012, Mr. Crenshaw noted Plaintiff looked

1 sickly, and Plaintiff indicated he had been "down" with the flu; he was "run down and listless."
2 (AR 696.)

3 In November 2012, Plaintiff reported he was struggling to meet the bills for both his home
4 and his wife's home in Arkansas; he was doing odd jobs and sending her money. (AR 695.) He
5 had turned in a "dirty test" to his parole agent, and indicated he knew that he was jeopardizing his
6 transfer. (AR 695.) His speech was of normal rate, rhythm, and volume as well as goal directed;
7 his attention and concentration appeared grossly within normal limits with no notable
8 distractibility. (AR 695.)

9 In January 2013, Plaintiff reported to Mr. Crenshaw he was just released from jail for a
10 "dirty test." (AR 797.) His wife had moved back from Arkansas, and they were moving out of the
11 place where he was currently living. (AR 797.) In March 2013, Mr. Crenshaw reported Plaintiff
12 was "doing well," his wife was working, and he was "enjoying himself." (AR 797.) Mr.
13 Crenshaw reported Plaintiff's affect was in full range and appropriate in content; his speech was of
14 a normal rate, rhythm, and volume and was goal directed; his memory was grossly intact; and his
15 attention and concentration appeared grossly within normal limits. (AR 797.)

16 **3. State Agency Examining Physicians Martin and Chandler**

17 On June 1, 2011, Plaintiff was seen by Paul Martin, Ph.D., for a psychological disability
18 evaluation. (AR 567-70.) Dr. Martin reviewed Plaintiff's psychological evaluation with Dr.
19 Castillo and the examination test results. (AR 567.) Plaintiff reported to Dr. Martin that he hears
20 voices, gets angry easily, and cannot tolerate crowds; he hears voices only occasionally when he
21 "gets stressed out." (AR 567.) Plaintiff also reported he was currently prescribed psychotropic
22 medications and that he had a family history of mental illness. (AR 568.)

23 Upon examination, Plaintiff was alert, "oriented x 3," but he did not know what day of the
24 week it was. (AR 568.) His speech was normal for tone, rate, and prosody; his overall sensory
25 functioning was remarkable for poor vision; his mood "was okay"; his attention and concentration
26 were adequate; he recited 4 digits forward and 4 in reverse; his fund of knowledge was poor;
27 memory for recently-learned information was poor in that he recited 0 out of 3 words after a brief
28 delay; his ability for abstraction was concrete, but his insight and judgment appeared poor; and he

1 denied having current hallucinations or delusions, although he claimed to have had them in the
2 past. (AR 568.) Upon psychological testing, Dr. Martin noted Plaintiff's results were "considered
3 to be a questionable representation of his current psychological functioning. He appeared to give
4 up very easily and his performance was severely impaired." (AR 568.) For example, his WAIS-
5 IV results indicated he was functioning "in the severely impaired range commensurate with mental
6 retardation." However, Dr. Martin reported he presumed that Plaintiff was not mentally retarded
7 and considered it "unlikely that he is truly developmentally delayed." (AR 569.)

8 Dr. Martin provided the following functional assessment:

9 The purpose of today's evaluation was to provide diagnostic and clinical
10 impressions, and to evaluate the claimant's current level of work-related abilities
11 from an emotional and cognitive standpoint. However, it should be noted that the
12 present evaluation was limited in scope. It was based on only one session of client
13 contact, in a structured environment, with pre-authorized tests. Background and
14 correlative information was considered to be limited. With these restrictions in
15 mind, the following clinical and functional impressions are offered.

14 PSYCHOLOGICAL/BEHAVIORAL FUNCTIONING

15 The claimant presents with a history of mental health treatment through CDCR. He
16 is currently being followed by the Parole Outpatient Clinic. Corroborative records
17 would be useful. He primarily presents with some depression and anxiety although
18 he does report a history of auditory hallucinations. It is not suspected that he has a
19 psychotic disorder. He does report learning difficulties.

18 COGNITIVE FUNCTIONING

19 His performance on current testing was severely impaired across all tested domains
20 except for the Bender Gestalt which was in the average range. There is some
21 suspicion that he may have given up easily on testing for secondary gain. Again,
22 corroborative records would be useful. He does report lifelong learning difficulties
23 and limited reading skills. He left school very early and was in special education.
24 However, it does not seem likely that he is mentally retarded which these scores
25 suggest. He did not have any problems following simple directions but had
26 difficulty as task complexity increased.

24 WORK-RELATED ABILITIES

25 The claimant had mild difficulty understanding, remembering, and carrying out
26 simple instructions. He had moderate difficulty with detailed and complex
27 instructions. He had moderate difficulty maintaining attention and concentration
28 for the duration of the evaluation. His pace was moderately decreased. He
demonstrated moderate difficulty with pace and persistence. He had mild difficulty
enduring the stress of the interview. He is likely to have moderate difficulty
adapting to changes in routine work-related settings. Based upon observations of

1 current behavior and reported psychiatric history, the claimant's ability to interact
2 with the public, supervisors, and coworkers there appears to be mild impairment.

3 **ABILITY TO MANAGE FUNDS**

4 He is capable of managing his funds independently.

5 (AR 569-70.)

6 On November 29, 2011, Plaintiff was examined by Jacklynn L. Chandler, Ph.D., a
7 registered psychological assistant supervised by Dr. Martin. (AR 651-54.) Plaintiff reported he
8 was currently prescribed Buspar and Zoloft for depression and anxiety by his treating provider.
9 (AR 652.) Plaintiff reported he was able to independently complete most activities of daily living
10 with restrictions related to depression and anxiety; he is unable to take a bus by himself, but he
11 could drive a car; he is able to do simple household chores such as washing dishes, doing laundry,
12 and preparing something simple to eat; he is able to go grocery shopping unattended; and he is
13 able to dress and groom himself. (AR 652.)

14 Upon examination, Dr. Chandler observed Plaintiff walked with a slow gait; his clothing
15 was soiled and well worn; his hygiene was poor and he was unkempt; he appeared fatigued; he
16 was oriented to person, place, year, and month only; his speech was clear and coherent; he made
17 [grammatical] errors and word tense errors; his thought process was linear and his thought content
18 was logical; there were no delusions, hallucinations or other signs of thought disorder; his affect
19 was restricted; his mood was dysphoric; and his insight and judgment appeared compromised due
20 to psychiatric symptoms. (AR 652.) During the testing process, Dr. Chandler noted Plaintiff was
21 genuine and cooperative; remote memory was grossly intact; he had difficulty reading a simple
22 sentence; and he was unable to write a simple sentence. (AR 652.)

23 Dr. Chandler provided the following functional assessment:

24 **Psychological/Behavioral Functioning**

25 The claimant reported a history of a mood disorder with depression, anxiety and
26 anger. He stated that his symptoms have worsened with chronic pain symptoms.
27 However, the claimant also reported a history of significant alcohol and
28 amphetamine abuse. It is unclear to what extent the claimant's past or present
psychiatric symptoms may be due to, or exacerbated by, his substance use. During
today's evaluation the claimant presented as moderately dysphoric. Based on the
claimant's clinical presentation, and his reported history and symptoms, the
claimant appears to meet criteria for DSM-IV-TR diagnoses of Depressive
Disorder, NOS and Anxiety Disorder, NOS. The claimant also reported that he is

1 currently prescribed medication to alleviate his symptoms. At present, the
2 claimant's psychiatric symptoms appear to be partially controlled by medication.

3 **Cognitive Functioning and Work Related Abilities**

4 The claimant reported learning difficulties throughout his school history. He
5 presented with impaired language skills. During today's evaluation the claimant
6 had mild difficulty understanding, remembering, and carrying out simple
7 instructions. He had moderate difficulty with complex instructions. He appears
8 capable of adapting to changes in routine work settings. The claimant had
9 moderate difficulty maintaining attention and concentration, and mild difficulty
10 maintaining pace for the duration of the evaluation.

11 The claimant had moderate difficulty enduring the stress of the interview. The
12 claimant had moderate difficulty interacting appropriately with this examiner.
13 Based upon observations of current behavior and reported psychiatric history[,] the
14 claimant's ability to interact with the public, supervisors, and co workers appears
15 to be moderately impaired. Based on his clinical presentation and reported history,
16 the claimant also appears to meet criteria for DSM-IV-TR diagnoses of Expressive
17 Language Disorder and Borderline Intellectual Functioning.

18 . . .

19 **Ability to Manage Funds**

20 Due to possible decreased judgment associated with the claimant's level of
21 intellectual functioning and psychiatric symptoms, he may require assistance in
22 managing his funds in his own best interests.

23 (AR 653-54.)

24 **4. Physician's Assistant Williamson**

25 On April 26, 2011, James D. Williamson, a Physician's Assistant ("PA"), completed a
26 Stanislaus County general assistance form indicating Plaintiff was unable to work full or part time
27 due to a mood disorder that limited Plaintiff's ability to deal with others. (AR 650.) In May 2011,
28 it was noted Plaintiff had been prescribed Buspar and Cialis. (AR 643.) In March 2012, Plaintiff
was examined by PA Williamson and complained of flu-like symptoms and chest pains; Plaintiff
also requested a referral to a psychiatrist. (AR 743.) On examination, Plaintiff was noted to be
oriented to time, place, person, and situation; he had normal insight and exhibited normal
judgment; and he demonstrated the appropriate mood and affect; Plaintiff was prescribed
amoxicillin. (AR 745-46.) At a follow-up appointment in May 2012, Plaintiff reported feeling
better when he was taking Buspar, and he had no other complaints. (AR 740.) PA Williamson
noted Plaintiff was positive for anxiety; he was oriented to time, place, person, and situation; his
affect was appropriate; he did not have any mood swings or paranoia; he had normal insight and

1 exhibited normal judgment; and he demonstrated appropriate mood and affect. (AR 742.) PA
2 Williamson prescribed amoxicillin, Buspirone, Flexeril, and Ibuprofen. (AR 742.)

3 At a follow-up appointment in May 2012, Plaintiff had no complaints. (AR 733.) In June
4 2012, Plaintiff saw PA Williamson for allergies and sinus problems that had not improved; his
5 prescription for Buspirone was continued. (AR 730.) One week later, Plaintiff was seen by Mia
6 Quaglia Oswald, ASW, and reported he was feeling more depressed and having suicidal thoughts.
7 (AR 728.) The clinic contacted PA Williamson who agreed to see Plaintiff the following day.
8 (AR 728.) He was assessed with a GAF score of 50. (AR 728.) On examination with PA
9 Williamson, Plaintiff was positive for depression and insomnia, but negative for anxiety, difficulty
10 concentrating, and any psychiatric symptoms. (AR 726.) Plaintiff denied hallucinations,
11 hopelessness, paranoia, suicidal ideation, and mood swings. (AR 726.) Plaintiff had normal
12 insight and exhibited normal judgment, mood, and affect. (AR 726.) Plaintiff was seen by PA
13 Williamson for other medical complaints between August and October 2012, and at each visit PA
14 Williamson noted Plaintiff was oriented to time, place, person, and situation; had normal insight
15 and judgment; and demonstrated appropriate mood and affect. (AR 706, 709, 713, 717, 721.)

16 **5. State Agency Reviewing Physicians**

17 On July 1, 2011, P. M. Balson, M.D., reviewed Plaintiff's records and opined Plaintiff had
18 the ability to understand, carry out, and remember simple one and two-step instructions; make
19 simple, work-related judgments and decisions; respond appropriately to supervision, coworkers,
20 and work situations; and deal with changes in a routine work setting. (AR 78.)

21 On December 23, 2011, Mark Berkowitz, Psy.D, reviewed Plaintiff's medical records.
22 (AR 92-94.) Dr. Berkowitz found Plaintiff moderately limited in his ability to understand,
23 remember, and carry out detailed instructions but found Plaintiff not significantly limited in any of
24 his other abilities. (AR 92-93.) Dr. Berkowitz opined Plaintiff retained the ability to understand,
25 carry out, and remember simple one- and two-step instructions; make simple, work-related
26 judgments and decisions; respond appropriately to supervision, coworkers, and work situations;
27 and deal with changes in a routine work setting. (AR 93.)

28

1 **6. Medical Evidence Submitted After the ALJ Decision**

2 On August 22, 2013, Robert L. Morgan, Ph.D., conducted a comprehensive psychological
3 evaluation and administered the Beck Depression Inventory II, Brief Symptom Inventory, and the
4 Personality Assessment Inventory. (AR 901-09.) Plaintiff reported that he was very anxious and
5 had trouble relating to people; he thought he had been depressed his whole life; he has thoughts of
6 killing himself, mood swings, and he hears voices. (AR 902.) Plaintiff indicated he could not
7 remember when he last worked, but it had involved hanging dry wall with his father-in-law.
8 (AR 902.) He reported two psychiatric hospitalizations, and his records from CDCR indicated he
9 was diagnosed with schizoaffective disorder. The Beck Depression Inventory II results were
10 suggestive of severe depression. (AR 906.) On the Brief Symptom Inventory test, Plaintiff
11 reported he was experiencing severe difficulty with nervousness, having trouble remembering
12 things and temper outbursts that he could not control, having no interest in things, trouble falling
13 asleep, difficulty making decisions, and feeling hopeless about the future. (AR 907.)

14 Dr. Morgan diagnosed Plaintiff with Schizoaffective Disorder by history and assigned him
15 a GAF score of 50. (AR 907-08.) Based on his presentation at the examination, Dr. Morgan
16 opined Plaintiff had marked impairment in his abilities to maintain social functioning; maintain
17 concentration, persistence, and pace; perform activities within a clear schedule; maintain
18 attendance and be punctual; complete a normal work day and work week without interruptions
19 from psychologically-based symptoms and perform at a consistent pace; and interact with
20 coworkers and the public; and to withstand the stress of a routine work day and deal with various
21 changes in a work setting. (AR 908-09.) Dr. Morgan also opined Plaintiff had a high likelihood
22 of emotionally deteriorating in a work environment. (AR 909.) Dr. Morgan completed a
23 psychiatric review technique form indicating Plaintiff meets Listing 12.03 for schizophrenic,
24 Paranoid and Other Psychotic Disorders due to marked impairments in his social functioning,
25 daily activities, and concentration, persistence, and pace. (AR 910.)

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1 **B. Plaintiff's Lay Statements Regarding His Mental Condition**

2 In connection with a prior application, Plaintiff completed a Disability Report form on
3 June 23, 2006. (AR 556-63.) He reported he was unable to work because he could not follow
4 directions and had anger problems such that he was easily frustrated and "exploded" easily.
5 (AR 257.) Plaintiff stated he heard voices, he was depressed, and he had difficulty being around
6 people. (AR 257.) He stated he became unable to work on October 15, 1998, but that he worked
7 after his impairments first bothered him. (AR 257.) He indicated he stopped working on
8 December 31, 2003. (AR 257.) Plaintiff reported he had not been seen by a doctor for his mental
9 condition. (AR 259.) He noted he had been prescribed Buspirone, Perphenazine, Ranitidine, and
10 Sertrol for his mental condition. (AR 261.)

11 In connection with Plaintiff's current SSI application, a Disability Report form was
12 completed by social security employee G. Brenda who interviewed Plaintiff on January 31, 2011.
13 (AR 264-66.) The form indicates Plaintiff's alleged onset date is December 31, 2003, and he had
14 trouble understanding and concentrating. The interviewer noted Plaintiff was prepared for the
15 interview, but Plaintiff would become confused at times and would be unable to answer the
16 questions. (AR 265.)

17 On February 9, 2011, Plaintiff completed another Disability Report form and indicated that
18 he had stopped working on December 1, 2005. (AR 268.) He reported that he had medical
19 records with the California Department of Corrections and Rehabilitation ("CDCR") showing his
20 prior medications. (AR 273.)

21 **C. Administrative Proceedings**

22 The Commissioner denied Plaintiff's application initially and again on reconsideration;
23 consequently, Plaintiff requested a hearing before an Administrative Law Judge ("ALJ"). (AR 81-
24 96, 119-123, 135-37.) A hearing was held on May 8, 2013, before an ALJ. (AR 33-66.)

25 **1. Plaintiff's Hearing Testimony**

26 Physically, Plaintiff is precluded from working because he has "messed-up shoulders" and
27 he has trouble remembering. (AR 39.) As for his mental condition, he has experienced depression
28 as long as he could remember, and he is treated at Paradise Medical Office for that condition.

1 (AR 42.) His medications have helped, but they also cause him to be tired and nauseated.
2 (AR 42.) His daily activities include cleaning, but he does not perform activities away from home
3 such as shopping, visiting others, or going to church. (AR 43.) He does not drive a car, but will
4 be accompanied by a friend when taking the bus so he does not get lost. (AR 44.)

5 Plaintiff reported drug use more than five years prior to the hearing, but went to a
6 rehabilitation program and now attends Narcotics Anonymous meetings once or twice a month.
7 (AR 45.)

8 Plaintiff completed the eighth grade and attended special education during the entire course
9 of his schooling. (AR 48.) He struggled with reading and writing in school. (AR 48.) Plaintiff
10 has had a life-long memory problem that he feels has worsened with time. (AR 53.) Plaintiff
11 indicated he would have a difficult time without special supervision from someone at work telling
12 him what to do, and would have a hard time staying focused at work for eight-hour days. (AR
13 53.) Plaintiff also reported he would have a significant problem focusing and maintaining
14 attention and concentration at work. (AR 53.) Plaintiff has problems being around other people,
15 and he experiences "bad anxiety attacks." (AR 54.) People do not "understand" him, and he has
16 trouble communicating. (AR 54.)

17 **2. ALJ's Decision**

18 The ALJ issued a decision on June 28, 2013, finding Plaintiff not disabled. (AR 18-26.)
19 The ALJ found Plaintiff had not engaged in substantial gainful activity since January 31, 2011, the
20 application date; Plaintiff has the following severe impairments: degenerative discs in the cervical
21 spine; obesity; depressive disorder, NOS and an anxiety disorder, NOS (AR 20); and Plaintiff does
22 not have an impairment or combination of impairments that meets or medically equals a Listed
23 Impairment in 20 C.F.R. Part 404, Subpart P, Appendix 1. The ALJ formulated the following
24 RFC:

25 [Plaintiff] has the residual functional capacity to perform medium work as defined
26 in 20 [C.F.R. §] 416.967(c) except the claimant has the ability to lift or carry up to
27 50 pounds occasionally and up to 25 pounds frequently; stand or walk for
28 approximately 6 hours per 8 hour work day, and sit for approximately 2 hours per 8
hour work day. The claimant can occasionally balance, stoop, crouch, kneel, crawl
and climb ramps or stairs but never climb ladders, ropes or scaffolds and never

1 perform overhead reaching. He is limited to work involving simple instructions
2 and occasional contact with public and coworkers; he can work in the presence of
others but not as part of a team.

3 (AR 21.) Upon consideration of this RFC, the ALJ found Plaintiff could not perform any of his
4 past relevant work, but could perform alternative work that exists in significant numbers in the
5 national economy. (AR 25.) The ALJ concluded Plaintiff was not disabled since January 31,
6 2011, the date of Plaintiff's application. (AR 26.)

7 Plaintiff sought review by the Appeals Council on August 22, 2014, and submitted
8 additional evidence obtained after the ALJ decision. (AR 13-16.) The Appeals Council denied
9 Plaintiff's request for review on October 29, 2014 (AR 1-6), and the ALJ's decision became the
10 final decision of the Commissioner. 20 C.F.R. §§ 404.981; 416.1481.

11 **C. Plaintiff's Argument on Appeal**

12 Plaintiff contends the ALJ improperly rejected the limitations opined by Dr. Castillo and
13 failed to set forth clear and convincing reasons to support the ALJ's adverse credibility
14 determination. Plaintiff also argues a recent medical opinion from Dr. Morgan is evidence that
15 undermines the ALJ's decision and remand for the ALJ's consideration is required.

16 **SCOPE OF REVIEW**

17 The ALJ's decision denying benefits "will be disturbed only if that decision is not
18 supported by substantial evidence or it is based upon legal error." *Tidwell v. Apfel*, 161 F.3d 599,
19 601 (9th Cir. 1999). In reviewing the Commissioner's decision, the Court may not substitute its
20 judgment for that of the Commissioner. *Macri v. Chater*, 93 F.3d 540, 543 (9th Cir. 1996).
21 Instead, the Court must determine whether the Commissioner applied the proper legal standards
22 and whether substantial evidence exists in the record to support the Commissioner's findings. *See*
23 *Lewis v. Astrue*, 498 F.3d 909, 911 (9th Cir. 2007). "Substantial evidence is more than a mere
24 scintilla but less than a preponderance." *Ryan v. Comm'r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th
25 Cir. 2008). "Substantial evidence" means "such relevant evidence as a reasonable mind might
26 accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971)
27 (quoting *Consol. Edison Co. of N.Y. v. NLRB*, 305 U.S. 197, 229 (1938)). The Court "must
28 consider the entire record as a whole, weighing both the evidence that supports and the evidence

1 that detracts from the Commissioner's conclusion, and may not affirm simply by isolating a
2 specific quantum of supporting evidence." *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir.
3 2007) (citation and internal quotation marks omitted).

4 **APPLICABLE LAW**

5 An individual is considered disabled for purposes of disability benefits if he or she is
6 unable to engage in any substantial, gainful activity by reason of any medically determinable
7 physical or mental impairment that can be expected to result in death or that has lasted, or can be
8 expected to last, for a continuous period of not less than twelve months. 42 U.S.C.
9 §§ 423(d)(1)(A), 1382c(a)(3)(A); *see also Barnhart v. Thomas*, 540 U.S. 20, 23 (2003). The
10 impairment or impairments must result from anatomical, physiological, or psychological
11 abnormalities that are demonstrable by medically accepted clinical and laboratory diagnostic
12 techniques and must be of such severity that the claimant is not only unable to do her previous
13 work, but cannot, considering her age, education, and work experience, engage in any other kind
14 of substantial, gainful work that exists in the national economy. 42 U.S.C. §§ 423(d)(2)-(3),
15 1382c(a)(3)(B), (D).

16 The regulations provide that the ALJ must undertake a specific five-step sequential
17 analysis in the process of evaluating a disability. In the First Step, the ALJ must determine
18 whether the claimant is currently engaged in substantial gainful activity. 20 C.F.R. §§
19 404.1520(b), 416.920(b). If not, in the Second Step, the ALJ must determine whether the claimant
20 has a severe impairment or a combination of impairments significantly limiting her from
21 performing basic work activities. *Id.* §§ 404.1520(c), 416.920(c). If so, in the Third Step, the ALJ
22 must determine whether the claimant has a severe impairment or combination of impairments that
23 meets or equals the requirements of the Listing of Impairments ("Listing"), 20 C.F.R. 404,
24 Subpart P, App. 1. *Id.* §§ 404.1520(d), 416.920(d). If not, in the Fourth Step, the ALJ must
25 determine whether the claimant has sufficient residual functional capacity despite the impairment
26 or various limitations to perform her past work. *Id.* §§ 404.1520(f), 416.920(f). If not, in the Fifth
27 Step, the burden shifts to the Commissioner to show that the claimant can perform other work that
28 exists in significant numbers in the national economy. *Id.* §§ 404.1520(g), 416.920(g). If a

1 claimant is found to be disabled or not disabled at any step in the sequence, there is no need to
2 consider subsequent steps. *Tackett v. Apfel*, 180 F.3d 1094, 1098-99 (9th Cir. 1999); 20 C.F.R. §§
3 404.1520, 416.920.

4 DISCUSSION

5 A. The ALJ Provided A Specific and Legitimate Reason to Discredit Dr. Castillo

6 Plaintiff contends the ALJ failed to state specific and legitimate reasons for rejecting the
7 functional limitations opined by Dr. Castillo, an examining physician.

8 1. Legal Standard

9 The medical opinions of three types of medical sources are recognized in Social Security
10 cases: "(1) those who treat the claimant (treating physicians); (2) those who examine but do not
11 treat the claimant (examining physicians); and (3) those who neither examine nor treat the
12 claimant (non-examining physicians)." *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995).
13 Generally, a treating physician's opinion should be accorded more weight than opinions of doctors
14 who did not treat the claimant, and an examining physician's opinion is entitled to greater weight
15 than a non-examining physician's opinion. *Id.* Where a treating or examining physician's opinion
16 is not contradicted by another doctor, the Commissioner must provide "clear and convincing"
17 reasons for rejecting the treating physician's ultimate conclusions. *Id.* If the treating or examining
18 doctor's medical opinion is contradicted by another doctor, the Commissioner must provide
19 "specific and legitimate" reasons for rejecting that medical opinion, and those reasons must be
20 supported by substantial evidence in the record. *Id.* at 830-31; accord *Valentine v. Comm'r Soc.*
21 *Sec. Admin.*, 574 F.3d 685, 692 (9th Cir. 2009). The ALJ can meet this burden by setting out a
22 detailed and thorough summary of the facts and conflicting clinical evidence, stating his
23 interpretation thereof, and making findings. *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir.
24 2008) (citing *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989)).

25 2. The ALJ Properly Found Dr. Castillo's Opinion Internally Inconsistent

26 The ALJ rejected Dr. Castillo's opinion due to "internal inconsistencies between the
27 findings upon examination, the diagnoses[,] and the residual functional capacity determined to be
28 appropriate for the claimant." (AR 23.) Plaintiff argues this reasoning fails to explain what within

1 Dr. Castillo's report is inconsistent. Dr. Castillo diagnosed Plaintiff with schizoaffective disorder
2 and noted that Plaintiff did not present as bipolar or psychotic at the examination. Because the
3 ALJ did not provide any analysis of the findings in relation to Dr. Castillo's schizoaffective
4 disorder diagnosis, Plaintiff argues the reasoning is not conducive to judicial review.

5 Defendant contends the ALJ sufficiently identified inconsistencies between Dr. Castillo's
6 opinion and his examination findings. Specifically, the ALJ discussed that on examination Dr.
7 Castillo reported Plaintiff had normal attention span, was not easily distracted, and could follow
8 three-stage verbal commands, yet Dr. Castillo opined Plaintiff had *extreme* impairment in his
9 ability to concentrate and *marked* impairment in completing simple tasks. Defendant maintains
10 Dr. Castillo's examination findings, therefore, did not support the limitations opined, and the ALJ
11 was entitled to give less weight to the opinion due to the internal inconsistencies.

12 Although the ALJ's statement that Dr. Castillo's opinion is internally inconsistent is not
13 precisely worded, review of the entire decision and the ALJ's discussion of the medical evidence
14 establish the ALJ considered Dr. Castillo's findings on examination to be inconsistent with his
15 ultimate opinion of Plaintiff's limitations. *Magallanes v. Bowen*, 881 F.2d 747, 755 (9th Cir.
16 1989) (courts are not "deprived of [their] faculties for drawing specific and legitimate inferences
17 from the ALJ's opinion"). In concluding there were internal inconsistencies, the ALJ noted the
18 following specific examination findings: normal attention span, Plaintiff was not easily distracted
19 and needed no structure from the evaluator, he was able to follow three-stage verbal commands
20 and a visual command, and he was able to write a sentence correctly with proper structure and
21 grammar. (AR 22.) The ALJ then noted that Dr. Castillo found extreme impairment in Plaintiff's
22 ability to complete detailed or complex tasks and concentrate, and marked impairment with the
23 ability to complete simple tasks and sustain an ordinary routine without sustained supervision.
24 (AR 23.) On its face, the findings of a normal attention span and not being easily distracted upon
25 examination do not comport with Dr. Castillo's opinion that Plaintiff had extreme impairment in
26 the ability to concentrate. Further, the examination finding that Plaintiff could follow a three-stage
27 verbal command is not consistent with a finding of marked impairment in the ability to complete
28 simple tasks. The ALJ properly noted these internal inconsistencies between Dr. Castillo's

1 examination findings and the ultimate functional limitations to which he opined. When a doctor's
2 conclusions are not consistent with his own findings, this is a specific and legitimate reason for
3 rejecting or giving that opinion less weight. *See Young v. Heckler*, 803 F.2d 963, 968 (9th Cir.
4 1986) (per curiam) (treating doctor's conclusory opinion that claimant was disabled was properly
5 rejected by ALJ when it was internally inconsistent and not consistent with doctor's medical
6 reports). The ALJ properly gave Dr. Castillo's opinion less weight due to internal inconsistencies.

7 The ALJ also noted there were inconsistencies with Dr. Castillo's diagnoses and the
8 residual functional capacity found appropriate for Plaintiff. Plaintiff argues Dr. Castillo's
9 diagnosis of schizoaffective disorder is fully supported and consistent with his examination
10 findings and the record, and the ALJ failed to explain how the findings were unresponsive of the
11 diagnosis. While Dr. Castillo's overall diagnosis may be supported, the ALJ's finding of
12 inconsistency between the clinical findings and the ultimate opinion is nonetheless valid. Finally,
13 even if the ALJ's specific statement about inconsistency in Dr. Castillo's diagnoses would not by
14 itself be considered a legitimate basis to reject the opinion, any error in that regard is harmless
15 because other another legally sufficient reason for discounting the opinion was stated – i.e.,
16 internal inconsistencies with Dr. Castillo's report. *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 885
17 (9th Cir. 2008) (error inconsequential to the non-disability determination is harmless).

18 **2. The ALJ Properly Rejected Dr. Castillo's Opinion as Inconsistent with the**
19 **Assessments Conducted by Dr. Martin, Dr. Chandler, and the Parole**
20 **Outpatient Clinic Treatment Notes**

21 The ALJ determined Dr. Castillo's 2006 report was inconsistent with more recent evidence
22 including the opinions of Dr. Martin, Dr. Chandler, and the examining specialists at the Parole
23 Outpatient Clinic. (AR 23.) Plaintiff claims the ALJ failed to explain why the opinions of Dr.
24 Martin, Dr. Chandler, and the Parole Outpatient Clinic treatment notes were given more weight
25 than the report of Dr. Castillo other than they were more recent. Plaintiff contends the ALJ failed
26 to explain how Dr. Castillo's report was undermined by Dr. Martin and Dr. Chandler's opinions.
27 As to the Parole Outpatient Clinic notes, Plaintiff argues these records were made by a non-
28 acceptable medical source and should not have been given more weight than Dr. Castillo's

1 opinion.

2 Defendant argues the ALJ properly found Dr. Castillo's opinion inconsistent with more
3 recent evidence. Dr. Martin assessed Plaintiff with a GAF of 65, indicating only mild
4 psychological symptoms. Dr. Martin opined Plaintiff had only mild difficulty in understanding,
5 remembering, and carrying out simple instructions, whereas Dr. Castillo opined Plaintiff had
6 marked limitations in this area. Dr. Chandler also found Plaintiff only mildly limited in his ability
7 to understand, remember, and carry out simple instructions. Dr. Castillo's opinion was also
8 inconsistent with the Parole Clinic examiner who observed no signs of a psychiatric disorder. In
9 March 2013, the records showed Plaintiff was doing well with no complaints, exhibited a normal
10 mood, had intact short and long-term memory; and normal attention and concentration. (AR 23,
11 797.)

12 Plaintiff contends the ALJ's mere notation that Dr. Castillo's opinion was inconsistent with
13 more recent records from Drs. Martin and Chandler and the Parole Clinic notes completed by Mr.
14 Crenshaw is not a legitimate basis to reject Dr. Chandler's opinion. Plaintiff emphasizes that
15 although Mr. Crenshaw noted Plaintiff did not need medication, Plaintiff was prescribed Buspar
16 and Cialis by PA Williamson only a few days after this notation was made, and Plaintiff continued
17 on medications between 2011 and 2013 for his mental condition.

18 Although a mere difference of opinion between examining physicians is not in itself a
19 specific and legitimate reason to give weight to one physician over another, here the ALJ
20 compared the inconsistency of Dr. Castillo's opinion to the large bulk of the evidence regarding
21 Plaintiff's mental condition including two other examining physicians and Mr. Crenshaw's reports.
22 Notably, Dr. Castillo's clinical findings, at odds with his ultimate conclusions about Plaintiff's
23 limitations as the ALJ noted, actually supported the 2011 opinions of Drs. Martin and Chandler
24 finding Plaintiff less limited than did Dr. Castillo. Pursuant to the Commissioner's regulations, the
25 consistency of a medical opinion with the record as a whole is a factor to evaluate in giving weight
26 to any particular medical opinion. 20 C.F.R. § 416.927(c)(4). The ALJ did not err in determining
27 this factor undermined the weight afforded to Dr. Castillo's opinion.

28 As for Mr. Crenshaw's notes, he is not an acceptable medical source and thus his notes are

1 entitled to less deference than medical sources. Nevertheless, his notes and observations are still
2 entitled to consideration along with the rest of the evidence. 20 C.F.R. § 416.913(d) ("we may
3 also use evidence from other sources to show the severity of your impairment(s) and how it affects
4 your ability to work"). Mr. Crenshaw's two years of treatment notes reflect a much less impaired
5 individual than that opined by Dr. Castillo, who only evaluated Plaintiff one time. Between 2011
6 and 2013, Plaintiff saw Mr. Crenshaw monthly. In May and July 2011, Plaintiff reported he was
7 doing well and in September 2011 Plaintiff reported working at a local diesel mechanics shop and
8 that he was happy to be working. (AR 698.) By December 2011, Plaintiff reported he was
9 working full time and "loving it." (AR 697.) In February 2012, Plaintiff reported he was still
10 working at the tire shop and felt good about his situation. In April 2012, Plaintiff had completed
11 his restitution payments and his case was being considered for discharge. In May 2012, Plaintiff
12 reported he was still working hard and saving money because he still had another \$600 to pay for
13 court costs beyond the restitution. He was working full time at Triangle Trucking and doing very
14 well. (AR 697.) The bulk of Mr. Crenshaw's observations were not medical opinions regarding
15 Plaintiff's condition, but instead reflected his observations about Plaintiff's functioning and how he
16 presented himself from 2011 to March 2013, which completely contradicts Plaintiff's presentation
17 to Dr. Castillo in 2006.

18 In relation to Mr. Crenshaw, Plaintiff characterizes the ALJ's rejection of Dr. Castillo as
19 predicated only on a "single treatment report by an unacceptable medical source." Mr. Crenshaw's
20 reports, however, extend over two years; he made notations about Plaintiff's mental status at each
21 visit observing that Plaintiff appeared stable and his mental status was within normal limits. (*See,*
22 *e.g.,* AR 696-97.) Mr. Crenshaw's observations of Plaintiff are consistent with the limitations
23 opined by Drs. Martin and Chandler in 2011, which the ALJ specifically noted in rejecting Dr.
24 Castillo's opinion. Not only was Dr. Castillo's opinion rendered five years before the relevant
25 disability period, the most recent observations of Plaintiff's condition by two examining physicians
26 and Mr. Crenshaw, who saw Plaintiff on a consistent basis for nearly two years, contradict the
27 extreme limitations opined by Dr. Castillo.

28 ///

1 Along with the medical evidence from Drs. Martin and Chandler, the ALJ was entitled to
2 consider Mr. Crenshaw's observations despite that he is not an acceptable medical source.
3 Viewing the record as a whole, nearly all the evidence and medical opinions in the file contradict
4 Dr. Castillo's 2006 opinion, and the ALJ was entitled to consider the evidence from Drs. Martin
5 and Chandler and from Mr. Crenshaw, and to assign that evidence more weight than Dr. Castillo's
6 opinion.

7 Finally, even if the ALJ failed to properly discuss all the ways in which the evidence from
8 Dr. Chandler, Dr. Martin, and Mr. Crenshaw undermined Dr. Castillo, the ALJ cited internal
9 inconsistencies in Dr. Castillo's opinion which is specific and legitimate basis to discount it. Any
10 error by the ALJ in failing to discuss how each piece of evidence contradicted Dr. Castillo is
11 harmless.

12 **B. The ALJ Provided Clear and Convincing Reasons to Discount Plaintiff's Lay**
13 **Statements**

14 Plaintiff contends the ALJ focused on trivial reasons for discounting his lay statements
15 which do not amount to a clear and convincing basis sufficient to support an adverse credibility
16 determination. Specifically, the ALJ noted the variation in Plaintiff's reports of his disability onset
17 date, but Plaintiff argues any variation in this regard was due to others who filled out various
18 disability forms on Plaintiff's behalf. The ALJ also noted a discrepancy regarding Plaintiff's
19 intention to seek medical attention, but Plaintiff asserts it was a non-attorney representative who
20 completed a form and marked that Plaintiff did not intend to seek medical treatment for his
21 conditions. Plaintiff contends a non-attorney representative's mistake on a form is not a clear and
22 convincing reason to support the ALJ's adverse credibility decision.

23 Defendant contends the ALJ gave four clear and convincing reasons to discount Plaintiff's
24 credibility: Plaintiff's statements were (1) unsupported by the objective medical evidence; (2) not
25 consistent with Plaintiff's daily activities; (3) inconsistent with examining the several physicians'
26 opinions; and (4) inconsistent with the record.

27 "In assessing the credibility of a claimant's testimony regarding subjective pain or the
28 intensity of symptoms, the ALJ engages in a two-step analysis." *Molina*, 674 F.3d 1112 (citing

1 *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009)). "First, the ALJ must determine whether the
2 claimant has presented objective medical evidence of an underlying impairment which could
3 reasonably be expected to produce the pain or other symptoms alleged." *Vasquez*, 572 F.3d at
4 591. "If the claimant meets the first test and there is no evidence of malingering, the ALJ can only
5 reject the claimant's testimony about the severity of the symptoms if she gives 'specific, clear and
6 convincing reasons' for the rejection." *Id.* (quoting *Lingenfelter*, 504 F.3d at 1036). "General
7 findings are insufficient; rather, the ALJ must identify what testimony is not credible and what
8 evidence undermines the claimant's complaints." *Lester*, 81 F.3d at 834.

9 As the Ninth Circuit has explained:

10 The ALJ may consider many factors in weighing a claimant's credibility, including
11 (1) ordinary techniques of credibility evaluation, such as the claimant's reputation
12 for lying, prior inconsistent statements concerning the symptoms, and other
13 testimony by the claimant that appears less than candid; (2) unexplained or
inadequately explained failure to seek treatment or to follow a prescribed course of
treatment; and (3) the claimant's daily activities. If the ALJ's finding is supported
by substantial evidence, the court may not engage in second-guessing.

14 *Tommasetti*, 533 F.3d at 1039 (citations and internal quotation marks omitted); *see also Bray*,
15 554 F.3d at 1226-27; 20 C.F.R. §§ 404.1529, 416.929.

16 The ALJ determined Plaintiff's impairments could reasonably be expected to cause some
17 of his alleged symptoms, but Plaintiff's statements concerning the intensity, persistence, and
18 limiting effects of these symptoms were not credible. (AR 22.) Thus, the ALJ was required to
19 state clear and convincing reasons to reject Plaintiff's lay statements. *Vasquez*, 572 F.3d at 591.

20 Although Defendant's argument is logical and generally supported by the record, the ALJ
21 did not articulate any rejection of Plaintiff's lay statements based on the lack of objective medical
22 support or inconsistency with the opinions of physicians as to Plaintiff's functioning. Reasons not
23 articulated by the ALJ may not be considered by a reviewing court. *Connett v. Barnhart*, 340 F.3d
24 871, 874 (9th Cir. 2003) ("We are constrained to review the reasons the ALJ asserts.").

25 The ALJ's credibility analysis provided the following reasoning:

26 The claimant indicated he stopped working on December 31, 2003[,] because it
27 was just a temporary job, a reason unrelated to the claimant's alleged impairments.
28 He also provided a different date [of] December 1, 2005, as the date he stopped
working (Exhibit 3E). However, the claimant also noted the impairments became

1 severe enough to make him unable to work on October 15, 1998, which is
2 inconsistent with the date he stopped working. Contrary to the claimant's
3 allegations, the claimant denied he had seen or anticipated seeing a medical source
4 for both physical and mental problems.

5 In a subsequent Disability Report, the claimant alleged worsening conditions; with
6 increased depression, insomnia, and anxiety which started approximately in
7 January 2011 (Exhibit 7E). The claimant indicated he had seen or anticipated
8 seeing a medical source for both physical and mental problems; and he noted being
9 unable to perform his daily activities.

10 (AR 22.)

11 The ALJ discounted Plaintiff's lay statements based on inconsistent statements recorded in
12 two different disability reports between 2006 and 2011. General inconsistent statements – even
13 those unrelated to the claimant's symptoms – can provide a permissible basis to discredit a
14 claimant's lay testimony. *See Light*, 119 F.3d at 792 ("An ALJ's finding that a claimant generally
15 lacked credibility is a permissible basis to reject excess pain testimony."); *see also Smolen v.*
16 *Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996) (ALJ may rely on ordinary techniques of credibility
17 evaluation including prior inconsistent statements or statements that are less than candid);
18 *Verduzco v. Apfel*, 188 F.3d 1087, 1090 (9th Cir. 1999) (holding ALJ properly relied on
19 inconsistent statements regarding the claimant's drinking as a basis to reject his testimony).

20 The inconsistencies referenced here represent a clear and convincing basis to reject
21 Plaintiff's credibility. The 2006 Disability Report states Plaintiff stopped working in 2003 because
22 his work then was just a temporary job. (AR 257.) The February 2011 Disability Report indicates
23 Plaintiff stopped working in December 2005 due to his conditions. (AR 268.) Plaintiff
24 characterizes these inconsistencies in his alleged onset dates as mistakes, probably attributable to a
25 third party who assisted Plaintiff in completing at least one of the Disability Report forms.
26 Plaintiff's yearly earnings report indicates his last income earned was in 2003, consistent with his
27 2006 Disability Report statement that he quit working in 2003. (AR 245.) However, Plaintiff's
28 various statements over time regarding when he became unable to work are fundamental details
that should be easily remembered and consistently reported, even where a third-party is recording
the information onto a Disability Report form. There is no allegation that other information in the

1 Disability Report forms was incorrectly recorded, or any reason why this information could not
2 have been clarified by Plaintiff at the hearing. Further, *all* of these reports are contradicted by
3 statements Plaintiff made to Mr. Crenshaw that he was working full-time in 2011 and 2012.³ The
4 wide vacillation in Plaintiff's statements casts doubt on the veracity of his symptom testimony in
5 general.

6 Finally, the ALJ noted that Plaintiff reported in August 2011 (AR 282) that he was unable
7 to complete *any* daily activities, yet this directly contradicts Plaintiff's statements to Mr. Crenshaw
8 in 2011 and 2012 that he was working full time and "loving it" (AR 697). Moreover, at the
9 hearing in 2013, Plaintiff testified he could perform some daily activities, including a limited
10 amount of cooking, some cleaning, and his personal grooming. (AR 43-44.) His statement that he
11 could perform *no* daily activities in 2011 appears to be an exaggeration in light of other statements
12 he made, particularly to his Parole social worker in 2011, and this is a clear and convincing reason
13 to discredit his lay statements regarding the extent of his limitations and symptoms.

14 In sum, these inconsistencies constitute a legally sufficient basis to support the ALJ's
15 adverse credibility determination.

16 **C. Evidence Submitted to the Appeals Council Does Not Undermine ALJ's Decision**

17 In seeking review of the ALJ's decision before the Appeals Council, Plaintiff submitted an
18 August 22, 2013, medical opinion rendered after the ALJ's decision. The Appeals Council
19 considered this opinion, included it in the administrative record, but denied review of the ALJ's
20 decision. Plaintiff argues this post-decision medical opinion undermines the ALJ's decision and
21 requires remand.

22 Pursuant to 20 C.F.R. § 404.976(b)(1), evidence that is newly submitted to the Appeals
23 Council will be considered as follows:

24
25 The Appeals Council will consider all the evidence in the administrative law judge
26 hearing record as well as any new and material evidence submitted to it which

27 ³ The statements to Mr. Crenshaw bear on Plaintiff's credibility whether or not he actually worked in 2011 and 2012.
28 Either he misrepresented his ability to work to the Social Security Administration *or* he made misrepresentations to
Mr. Crenshaw. These inconsistent statements also have bearing on the veracity of Plaintiff's argument that a third
party simply recorded the alleged onset dates incorrectly.

1 relates to the period on or before the date of the administrative law judge hearing
2 decision. If you submit evidence which does not relate to the period on or before
3 the date of the administrative law judge hearing decision, the Appeals Council will
4 return the additional evidence to you with an explanation as to why it did not accept
5 the additional evidence and will advise you of your right to file a new application . .
6

7
8 When the Appeals Council denies review, the decision of the ALJ is a final decision of
9 the Commissioner. *Russell v. Brown*, 856 F.2d 81, 83-84 (9th Cir. 1988). However, any
10 additional evidence considered by the Appeals Council in denying review becomes part of the
11 administrative record for review by the district court. *Brewes v. Astrue*, 682 F.3d 1157, 1163 (9th
12 Cir. 2012). In considering a claimant's evidence submitted to the Appeals Council and made part
13 of the record, reviewing courts must assess the record as a whole and determine whether the ALJ's
14 decision is supported by substantial evidence. *Brewes*, 682 F.3d at 1161-62.

15 Plaintiff contends Dr. Morgan's August 22, 2013, report undermines the ALJ's finding that
16 Plaintiff is able to perform a full range of light work. Particularly, Dr. Morgan found Plaintiff
17 meets Listing 12.03 based on a diagnosis for a Schizoaffective Disorder. The Commissioner
18 asserts Dr. Morgan's opinion that Plaintiff is presumptively disabled under Listing 12.03 does not
19 change the fact that substantial evidence nonetheless supports the ALJ's decision. There are two
20 examining physicians and two state agency psychological experts who opined Plaintiff had no
21 presumptively disabling limitations under the Listings. Moreover, the record does not support that
22 Plaintiff had marked limitations in all areas of functioning, which is the basis for Dr. Morgan's
23 opinion Plaintiff meets Listing 12.03. Specifically, Plaintiff reported he cared for his personal
24 needs, prepared meals, completed household chores, shopped, and used public transportation,
25 which conflicts with Dr. Morgan's assessment that Plaintiff has marked limitations in activities of
26 daily living.

27 Dr. Morgan's August 2013 opinion is not likely to change the outcome of the underlying
28 ALJ decision, detracting from its materiality and significance. Dr. Morgan is not a treating
physician who has cared for Plaintiff on a long-term basis; rather, his opinion is based on a one-
time examination. Dr. Morgan's status as an examining physician would not be significant but for
the fact that Dr. Morgan opines retrospectively that Plaintiff is "thought to have been disabled

1 since the point in time that he initially applied for disability." (AR 909.) The only medical
2 records Dr. Morgan reviewed in reaching this conclusion were Plaintiff's CDCR records and
3 progress notes from Golden Valley Health Center from March 6, 2012 through October 16, 2012.
4 Dr. Morgan did not review the psychological examination results from Dr. Martin or Dr. Chandler
5 who determined at separate examinations in 2011 that Plaintiff had only moderate mental
6 limitations, was able to perform simple household chores, and could dress and groom himself. On
7 testing with Dr. Martin, it was noted Plaintiff "may have given up early on testing for secondary
8 gain," and that it did "not seem likely" that Plaintiff was mentally retarded, despite his test results
9 that suggested mental retardation. (AR 569.) Dr. Martin concluded Plaintiff had only mild
10 difficulty in understanding, remembering, and carrying out simple instructions with moderate
11 limitations in persistence, pace, concentration, and ability to adapt to changes in a work setting.
12 (AR 569.) On further psychological testing in November 2011, Dr. Chandler reported similar
13 findings including that Plaintiff had mild difficulty understanding, remembering, and carrying out
14 simple instructions and in maintaining pace, and moderate difficulty in persistence and adaptation
15 to change in a routine work setting. (AR 653-54.) None of these examination results were
16 considered by Dr. Morgan in making his sweeping retrospective opinion as to Plaintiff's functional
17 abilities since the onset of Plaintiff's mental impairments.

18 Moreover, Dr. Morgan did not review the notes from Plaintiff's Parole social worker, Mr.
19 Crenshaw, who reported Plaintiff was working full-time between September 2011 and June 2012.
20 Plaintiff's admissions to Mr. Crenshaw directly contradict Dr. Morgan's opinion that Plaintiff is
21 markedly impaired in all three areas of functioning. For example, Plaintiff reported to Dr. Morgan
22 he has been living in a trailer with his friend Carmen since his discharge from prison in 2011, and
23 were it not for Carmen, he would be living under a bridge. Based on these statements, Dr. Morgan
24 concluded Plaintiff was markedly impaired in his activities of daily living and his social
25 functioning. (*See* AR 908.) However, between 2011 and 2013, Plaintiff reported a high degree of
26 functioning to Mr. Crenshaw. In September 2011, Plaintiff reported to Mr. Crenshaw he was
27 working at a local diesel mechanics shop, and he was happy to be working (AR 698); in December
28 2011, Plaintiff reported he was working full time and "loving it" (AR 697); on February 2012,

1 Plaintiff reported he was still working at the same tire shop, and that he felt good about the
2 situation (AR 697); in April 2012, Plaintiff reported he had completed all his restitution payments
3 and was waiting for his case to be reviewed for discharge (AR 697); in May 2012, Plaintiff
4 reported he was working hard and saving money (AR 697); in November 2012, Plaintiff reported
5 he was struggling to meet the bills and was doing odd jobs and sending money to his wife
6 (AR 695); in January 2013, Plaintiff stated his wife had moved back from Arkansas, and they
7 were moving out of the place where he was currently living (AR 797); and in March 2013, Mr.
8 Crenshaw reported Plaintiff was "doing well," his wife was working, and he was "enjoying
9 himself" (AR 797). Mr. Crenshaw consistently reported Plaintiff's affect was in full range and
10 appropriate in content; his speech was of a normal rate, rhythm, and volume and was goal
11 directed; his memory was grossly intact; and his attention and concentration appeared grossly
12 within normal limits. (AR 797.) Between 2011 and 2013, Mr. Crenshaw also consistently
13 observed that Plaintiff appeared stable and compliant, and his mental status appeared within
14 normal limits. (AR 696-97.)

15 As Dr. Morgan's August 2013 opinion is not predicated on a complete review of Plaintiff's
16 past records, its value in providing a retrospective opinion as to Plaintiff's functioning during the
17 relevant period is limited. Moreover, because the opinion is widely contradicted by Plaintiff's
18 other statements regarding his abilities to complete daily activities and his admissions that he was
19 working full time for nearly a year between September 2011 and July 2012, its probative value is
20 further diminished. In consideration of the entire record, Dr. Morgan's opinion stands in contrast
21 to the great weight of the evidence including several other examining physician's opinions and
22 Plaintiff's own statements. Although Plaintiff argues Dr. Morgan's opinion bolsters Dr. Castillo's
23 2006 opinion which the ALJ suggested was stale and outdated, neither of these examining
24 physicians took into account Plaintiff's reported functioning from 2011 through 2013. Rather, the
25 bulk of the evidence from 2011 through 2013 indicated Plaintiff had a higher degree of
26 functioning than either Dr. Castillo or Dr. Morgan opined based on their one-time examination
27 without full review of all other relevant evidence.

28 For these reasons, Dr. Morgan's examining opinion does not materially undermine the

1 ALJ's decision, and there is *not* a substantial likelihood the ALJ's consideration of the additional
2 evidence will change the disability determination. *See McLeod v. Astrue*, 640 F.3d 881, 888 (9th
3 Cir. 2011) (mere probability of prejudicial error is insufficient to support remand; there must be
4 substantial likelihood of prejudicial error).

5 **CONCLUSION**

6 Based on the foregoing, the Court finds that the ALJ's decision is supported by substantial
7 evidence in the record as a whole and based on proper legal standards. Accordingly, the Court
8 DENIES Plaintiff's appeal from the administrative decision of the Commissioner of Social
9 Security. The Clerk of this Court is DIRECTED to enter judgment in favor of Defendant Carolyn
10 Colvin, Acting Commissioner of Social Security and against Plaintiff.

11 IT IS SO ORDERED.

12 Dated: March 24, 2016

13 /s/ Sheila K. Oberto
14 UNITED STATES MAGISTRATE JUDGE

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