

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jun 25, 2020

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JUAN V.,

Plaintiff,

v.

ANDREW SAUL,

Commissioner of Social Security,

Defendant.

No. 1:19-cv-03212-SMJ

**ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND DENYING THE
COMMISSIONER'S MOTION
FOR SUMMARY JUDGMENT**

Plaintiff Juan V. appeals the Administrative Law Judge's (ALJ) denial of his application for Supplemental Security Income (SSI) benefits. Plaintiff alleges the ALJ (1) failed to assess Plaintiff's right arm and right ankle impairments as severe, (2) improperly discounted or dismissed medical opinions, (3) improperly discounted Plaintiff's symptom testimony, and (4) failed to show Plaintiff could perform specific jobs in substantial numbers in the economy. ECF No. 12. The Commissioner of Social Security ("Commissioner") asks the Court to affirm the ALJ's decision. ECF No. 21. Before the Court, without oral argument, are the parties' cross-motions for summary judgment, ECF Nos. 12, 21.

Having reviewed the administrative record, the parties' briefs, and the

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
AND DENYING THE COMMISSIONER'S MOTION FOR SUMMARY
JUDGMENT – 1

1 relevant authority, the Court is fully informed. For the reasons set forth below, the
2 Court finds the ALJ committed reversible errors. Although these errors invalidated
3 the ALJ's conclusion that Plaintiff did not qualify for benefits, Plaintiff's
4 entitlement is not clear from the face of the record. Accordingly, the Court grants
5 Plaintiff's motion for summary judgment, denies the Commissioner's motion for
6 summary judgment, and remands for further proceedings.

7 **BACKGROUND¹**

8 Plaintiff applied for SSI benefits on August 14, 2014. AR 232–37.²
9 The Commissioner denied Plaintiff's application on December 29, 2014, *see*
10 AR 92–104, and denied it again on reconsideration, *see* AR 105–18. At Plaintiff's
11 request, a hearing was held before ALJ Wayne N. Araki and a second hearing was
12 held, also before ALJ Araki. AR 43–64, 65–91. The ALJ denied Plaintiff benefits
13 on June 20, 2018. AR 12–36. The Appeals Council denied Plaintiff's request for
14 review on July 17, 2019. AR 1–6. Plaintiff then appealed to this Court under 42
15 U.S.C. §§ 405(g), 1383(c)(3). ECF No. 1.

16 //

18 ¹ The facts, thoroughly stated in the record and the parties' briefs, are only briefly
19 summarized here.

20 ² References to the administrative record (AR), ECF No. 9, are to the provided page
numbers to avoid confusion.

1 **DISABILITY DETERMINATION**

2 A “disability” is defined as the “inability to engage in any substantial gainful
3 activity by reason of any medically determinable physical or mental impairment
4 which can be expected to result in death or which has lasted or can be expected to
5 last for a continuous period of not less than twelve months.” 42 U.S.C.
6 §§ 423(d)(1)(A), 1382c(a)(3)(A). The decision-maker uses a five-step sequential
7 evaluation process to determine whether a claimant is disabled. 20 C.F.R.
8 §§ 404.1520, 416.920.

9 Step one assesses whether the claimant is engaged in substantial gainful
10 activities. If he is, benefits are denied. 20 C.F.R. §§ 404.1520(b), 416.920(b). If he
11 is not, the decision-maker proceeds to step two.

12 Step two assesses whether the claimant has a medically severe impairment or
13 combination of impairments. 20 C.F.R. §§ 404.1520(c), 416.920(c). If the claimant
14 does not, the disability claim is denied. If the claimant does, the evaluation proceeds
15 to the third step.

16 Step three compares the claimant’s impairment with a number of listed
17 impairments acknowledged by the Commissioner to be so severe as to preclude
18 substantial gainful activity. 20 C.F.R. §§ 404.1520(d), 404 Subpt. P App. 1,
19 416.920(d). If the impairment meets or equals one of the listed impairments, the
20 claimant is conclusively presumed to be disabled. If the impairment does not, the

1 evaluation proceeds to the fourth step.

2 Step four assesses whether the impairment prevents the claimant from
3 performing work he has performed in the past by examining the claimant's residual
4 functional capacity, or RFC. 20 C.F.R. §§ 404.1520(e), 416.920(e). If the claimant
5 is able to perform his previous work, he is not disabled. If the claimant cannot
6 perform this work, the evaluation proceeds to the fifth step.

7 Step five, the final step, assesses whether the claimant can perform other
8 work in the national economy in view of his age, education, and work experience.
9 20 C.F.R. §§ 404.1520(f), 416.920(f); *see Bowen v. Yuckert*, 482 U.S. 137 (1987).
10 If the claimant can, the disability claim is denied. If the claimant cannot, the
11 disability claim is granted.

12 The burden of proof shifts during this sequential disability analysis. The
13 claimant has the initial burden of establishing a prima facie case of entitlement to
14 disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th Cir. 1971). The
15 burden then shifts to the Commissioner to show (1) the claimant can perform other
16 substantial gainful activity, and (2) that a "significant number of jobs exist in the
17 national economy," which the claimant can perform. *Kail v. Heckler*, 722
18 F.2d 1496, 1498 (9th Cir. 1984). A claimant is disabled only if his impairments are
19 of such severity that he is not only unable to do his previous work but cannot,
20 considering his age, education, and work experiences, engage in any other

1 substantial gainful employment that exists in the national economy. 42 U.S.C.
2 §§ 423(d)(2)(A), 1382c(a)(3)(B).

3 **ALJ FINDINGS**

4 At step one, the ALJ found Plaintiff had not engaged in substantial gainful
5 activity since the application date. AR 17.

6 At step two, the ALJ found that Plaintiff had three medically determinable
7 severe impairments: affective disorder, post-traumatic stress disorder (PTSD), and
8 residual effects of gunshot wounds, including hip fractures and gastrointestinal
9 disorder. *Id.*

10 At step three, the ALJ found that Plaintiff did not have an impairment or
11 combination of impairments that met or medically equaled the severity of a listed
12 impairment. AR 19.

13 At step four, the ALJ found that Plaintiff had an RFC sufficient to perform
14 sedentary work as defined in 20 C.F.R. § 416.967(a) with the following limitations:

15 [Plaintiff] can lift and/or carry ten pounds occasionally and less than
16 ten pounds frequently. He can stand and/or walk in 15-30-minute
17 intervals for a total of two hours per day. [Plaintiff] can sit in two- hour
18 intervals for a total of eight hours per day. He cannot climb ladders,
19 ropes, or scaffolds. [Plaintiff] [can] occasionally climb stairs and
20 ramps. [Plaintiff] can occasionally balance, stoop, kneel, crouch, and
crawl. [Plaintiff] can tolerate occasional exposure to extreme cold. He
cannot use high-impact tools such as nail guns or jack hammers,
otherwise he can tolerate occasional exposure to vibrations. [Plaintiff]
cannot work at exposed heights and cannot operate heavy equipment;
otherwise, he can tolerate occasional exposure to hazards. [Plaintiff] is

1 able to remember and understand instructions for tasks generally
2 required by occupations with an SVP of 1-2, i.e., tasks that can be
3 learned by simple demonstration only or within 30 days. The claimant
4 is able to carry out instructions for tasks as well as complete tasks
5 generally required by occupations with an SVP of 1-2. He can
6 occasionally interact with the general public and with co-workers or
7 peers. Work should not require travel as a critical element of the job.
8 The claimant is able to adjust to work setting changes generally
9 associated with occupations with an SVP of 1-2. Work tasks should be
10 able to be completed without the assistance of others although
11 occasional assistance would be tolerated.

12 AR 21. In reaching this determination, the ALJ gave some weight to state medical
13 consultants Gordon Hale, M.D. and Howard Platter, M.D., as well as those of
14 consultative examiner William Drenguis, M.D. AR 24–25. The ALJ gave limited
15 weight to the opinions of treating providers Shawn Fox, ARNP and Sarah Garrison,
16 ARNP, and little weight to the opinion of consultant Brent Packer, M.D. AR 25.
17 The ALJ gave significant weight to state psychological consultants Thomas
18 Clifford, Ph.D. and Dan Donahue, Ph.D., some weight to consultative examiner
19 Gregory Sawyer, M.D., and very little weight to examining provider Jenifer
20 Schultz, Ph.D. AR 26–27. The ALJ gave very little weight to the temporary
functional limitations assigned by treatment providers while Plaintiff recovered
from various injuries and to evaluations completed in June 2009, October 2009, and
June 2011, and no weight to the disability ratings assigned by physical therapists
and to the disabled parking permit approval provided to Plaintiff in October 2015.
AR 28.

1 At step five, the ALJ found Plaintiff had no past relevant work but could
2 perform jobs existing in substantial number in the national economy including final
3 assembler, table worker, and masker. *Id.* at 28–29.

4 STANDARD OF REVIEW

5 The Court must uphold an ALJ’s determination that a claimant is not disabled
6 if the ALJ applied the proper legal standards and there is substantial evidence in the
7 record, considered as a whole, to support the ALJ’s decision. *Molina v. Astrue*, 674
8 F.3d 1104, 1110 (9th Cir. 2012) (citing *Stone v. Heckler*, 761 F.2d 530, 531 (9th
9 Cir. 1985)). “Substantial evidence ‘means such relevant evidence as a reasonable
10 mind might accept as adequate to support a conclusion.’” *Id.* at 1110 (quoting
11 *Valentine v. Comm’r Soc. Sec. Admin.*, 574 F.3d 685, 690 (9th Cir. 2009)). This
12 must be more than a mere scintilla but may be less than a preponderance. *Id.*
13 at 1110–11 (citation omitted). If the evidence supports more than one rational
14 interpretation, the Court must uphold an ALJ’s decision if it is supported by
15 inferences reasonably drawn from the record. *Id.*; *Allen v. Heckler*, 749 F.2d 577,
16 579 (9th Cir. 1984). The Court will not reverse an ALJ’s decision if the errors
17 committed by the ALJ were harmless. *Molina*, 674 F.3d at 1111 (citing *Stout v.*
18 *Comm’r, Soc. Sec. Admin.*, 454 F.3d 1050, 1055–56 (9th Cir. 2006)). “[T]he burden
19 of showing that an error is harmful normally falls upon the party attacking the
20 agency’s determination.” *Shinseki v. Sanders*, 556 U.S. 396, 409 (2009).

1 ANALYSIS

2 **A. Any error in failing to find Plaintiff’s right arm and right ankle**
3 **impairments were severe was harmless**

4 Plaintiff contends the ALJ’s determination that his right arm and right ankle
5 impairments were not severe at step two was in error. ECF No. 12 at 3–7. The
6 Commissioner contends that Plaintiff’s right arm and right ankle impairments do
7 not meet the durational requirements to be classified as severe impairments. ECF
8 No. 19 at 3–4.

9 Step two is a threshold determination to screen out weak claims of disability.
10 *Bowen v. Yuckert*, 482 U.S. 137, 146–47 (1987). This step is “not meant to identify
11 the impairments that should be taken into account when determining the RFC.”
12 *Buck v. Berryhill*, 869 F.3d 1040, 1048 (9th Cir. 2017). Rather, when assessing
13 RFC, the ALJ must consider all symptoms, whether from conditions found to be
14 “severe” at step two or otherwise. *Id.* Plaintiff’s argument that the failure to list
15 these as severe impairments was “outcome-determinative” is thus unavailing. *See*
16 ECF No. 22 at 3. The ALJ’s step two analysis was favorable to Plaintiff and the
17 ALJ considered all of Plaintiff’s symptoms, including his right ankle fracture and
18 medical findings related to Plaintiff’s right hand. AR 17, 21, 23, 25 & 28. Thus, any
19 error in failing to find that specific impairments were not severe was harmless. *See*
20 *Buck*, 869 F.3d at 1048.

1 **B. The ALJ erred in discounting the opinions of ARNP Fox, but did not err**
2 **in rejecting the opinions of Dr. Schultz, ARNP Garrison, Dr. Packer, Dr.**
3 **Clifford and Dr. Donahue, or the state evaluations from 2009 and 2011**

4 Plaintiff argues the ALJ erred by giving limited weight to the opinions of
5 treating providers Shawn Fox, ARNP and Sarah Garrison, ARNP, little weight to
6 the opinions of non-examining physician Brent Packer, M.D., very little weight to
7 examining psychologist Jenifer Schultz, Ph.D., no weight to state evaluations
8 completed in June 2009, October 2009, and June 2011, and significant weight to
9 state psychological consultants Thomas Clifford, Ph.D. and Dan Donahue, Ph.D.
10 ECF No. 12 at 7–16. The Commissioner argues substantial evidence supports the
11 ALJ’s weighing of the medical opinions. ECF No. 21 at 7.

12 For SSI appeal purposes, there are three types of physicians: “(1) those who
13 treat the claimant (treating physicians); (2) those who examine but do not treat the
14 claimant (examining physicians); and (3) those who neither examine nor treat the
15 claimant [but who review the claimant’s file] (non-examining physicians).”
16 *Holohan v. Massanari*, 246 F.3d 1195, 1201–02 (9th Cir. 2001). Generally, a
17 treating physician’s opinion carries more weight than an examining physician’s,
18 and an examining physician’s opinion carries more weight than a non-examining
19 physician’s. *Id.* at 1202. “In addition, the regulations give more weight to opinions
20 that are explained than to those that are not, and to the opinions of specialists
concerning matters relating to their specialty over that of nonspecialists.” *Id.*

1 If a treating or examining physician’s opinion is uncontradicted, the ALJ may
2 reject it only for “clear and convincing reasons that are supported by substantial
3 evidence.” *Bayliss*, 427 F.3d at 1216. “If a treating or examining doctor’s opinion
4 is contradicted by another doctor’s opinion, an ALJ may only reject it by providing
5 specific and legitimate reasons that are supported by substantial evidence.” *Id.*
6 (citing *Lester*, 81 F.3d 821, 830–31).

7 **1. Dr. Schultz, Ph.D.**

8 The ALJ gave very little weight to examining psychologist Dr. Schultz,
9 finding that Dr. Schultz’s opinions were unsupported by her examination findings
10 and were inconsistent with the record as a whole. AR 27. The ALJ specifically noted
11 that Dr. Schultz’s examination showed Plaintiff had “intact immediate recall and
12 could perform a three-step command correctly,” though “other tests revealed some
13 memory and concentration deficit.” *Id.* The ALJ determined that these results did
14 not support the “extreme functional limitations” Dr. Schultz assessed. *Id.* The ALJ
15 also noted that Dr. Schultz “provided no explanation for the extreme social
16 limitations she assessed,” and that her report indicates Plaintiff “was cooperative
17 and presented with appropriate grooming and normal speech.” *Id.* The ALJ
18 explained that the extreme social limitations were inconsistent with Plaintiff’s own
19 allegations of his anxiety and paranoia and with Plaintiff’s treatment records, which
20 document mental status and functioning within normal limits. *Id.*

1 Dr. Schultz's opinions are contradicted by the opinions of examining
2 psychologist Dr. Sawyer and of non-examining psychologists Dr. Clifford and
3 Dr. Donahue, and thus the ALJ was required to give specific and legitimate reasons
4 supported by substantial evidence to assign them reduced weight. *Bayliss*, 427 F.3d
5 at 1216. Here, the ALJ gave three specific and legitimate reasons: that Dr. Schultz's
6 opinion was (1) unsupported by her own examination findings, (2) inconsistent with
7 Plaintiff's allegations, and (3) inconsistent with the medical record as a whole.
8 AR 27. Plaintiff contends, however, that the ALJ's determination that the opinions
9 were unsupported was improper and that her findings are not inconsistent with
10 Plaintiff's medical records or his own symptom testimony. ECF No. 12 at 9–11.

11 However, a review of the record contradicts the ALJ's assessment that Dr.
12 Schultz's opinion was unsupported by her own examination findings. Although Dr.
13 Schultz did find Plaintiff could perform a three-step command correctly and was
14 able to immediately recall three objects, her examination also shows numerous
15 findings that reflect more than "some" memory and concentration deficit and which
16 would support Dr. Schultz's assessment of significant limitation. AR 804. For
17 example, Plaintiff was not able to recall any of the three objects after a short time,
18 his historical memory was poor, his serial sevens test reflected only one of five
19 correct answers, and he was not able to spell "world" either forwards or backwards.
20 *Id.* In other words, Plaintiff's memory and concentration test results were primarily

1 negative. Dr. Schultz specifically identified the poor serial sevens test results,
2 Plaintiff's poor core memory, and his difficulty concentrating during the
3 examination as reasons for her functional assessment. AR 805.

4 The ALJ is also incorrect that Dr. Schultz provided no explanation for the
5 extreme social limitations she assessed. Dr. Schultz described Plaintiff's "poor
6 social interaction" as a basis for her functional assessment and although the ALJ
7 correctly noted that Plaintiff was cooperative and presented with appropriate
8 grooming and normal speech, Dr. Schultz also reported that he had a slack affect.
9 AR 804. Dr. Schultz further explained that Plaintiff reported feeling paranoid
10 around people. AR 808. Although some of these symptoms appear to be based on
11 Plaintiff's own description of his social functioning, this is not a sufficient basis to
12 discount Dr. Schultz's assessment. *See Buck*, 869 F.3d at 1049 (citing *Poulin v.*
13 *Bowen*, 817 F.2d 865, 873 (D.C. Cir. 1987)) ("Psychiatric evaluations may appear
14 subjective, especially compared to evaluation in other medical fields. Diagnoses
15 will always depend in part on the patient's self-report, as well as on the clinician's
16 observations of the patient. But such is the nature of psychiatry."). Therefore, this
17 reason for rejecting Dr. Schultz's opinion was not supported by substantial
18 evidence. *See Bayliss*, 427 F.3d at 1216.

19 The ALJ next opined that Dr. Schultz's opinions were inconsistent with
20 Plaintiff's own allegations that his symptoms, in the ALJ's words, "cause some

1 anxiety and paranoia.” AR 27. The ALJ did not identify specific records to support
2 this assertion and a review of the record contradicts the ALJ’s characterization of
3 Plaintiff’s alleged symptoms. Plaintiff’s testimony at the hearing was vague as to
4 his anxiety and depression. AR 81 (“I’ve been—I get anxieties. And, I can’t sleep
5 at night. I’m always moving up and down, and feel, like, depressed and—yeah.”).
6 However, Plaintiff previously asserted he is always thinking about the random
7 shooting that resulted in his injuries,³ is afraid to be in public, cannot sleep, feels
8 depressed, has “a lot of anxiety and [he is] always scared,” and that he does not
9 spend time with others because he feels unsafe. AR 258, 265. As such, this reason
10 was also not supported by substantial evidence.

11 Finally, the ALJ asserted Dr. Schultz’s opinion was inconsistent with other
12 medical records, which “generally document mental status and functioning that is
13 within normal limits.” AR 27. The ALJ referenced Plaintiff’s “treatment records,
14 discussed above,” and the ALJ’s prior discussion of Plaintiff’s psychiatric treatment
15 history cited from Plaintiff’s treating physician reflecting that, although Plaintiff
16 occasionally reported anxiety and his affect at those times was congruous with that
17 mood, on other occasions he did not report any anxiety and his cognitive
18 functioning was consistently within normal limits. AR 27, 23 (citing AR 838, 848,

20 ³ Plaintiff was targeted at random and shot multiple times while sitting in his car
with his toddler. AR 792. The culprit was not arrested. *Id.*

1 850, 852 & 855). These records, which span a period from December 2016 to
2 February 2018, support the ALJ’s decision to give limited weight to Dr. Schultz’s
3 opinions.

4 Plaintiff points to records from Dr. Sawyer’s examination that somewhat
5 undermine the ALJ’s assertion. During that examination, Plaintiff’s affect was
6 anxious and his mental examination results showed multiple negative results.
7 AR 583–84. However, Dr. Sawyer’s interpretation of these results reflects that
8 Plaintiff would only have “some” difficulty in sustaining concentration and
9 persistence in work-related activity at a reasonable pace but would not have
10 difficulty in other aspects of work. AR 585. Because this evidence supports more
11 than one rational interpretation, the Court upholds the ALJ’s decision, which is
12 supported by inferences reasonably drawn from the record. *See Molina*, 674 F.3d
13 at 1110. Similarly, Plaintiff’s assertion that Dr. McVay’s description of Plaintiff as
14 “anxious” does not undermine the ALJ’s decision because it is not clear from the
15 record that his anxiety resulted in his mental status or functioning being outside
16 normal limits. AR 792–93.

17 Two of the three reasons the ALJ gave for discounting Dr. Schultz’s opinions
18 were not supported by substantial evidence. However, because the ALJ’s
19 determination that Dr. Schultz’s opinions were inconsistent with the record as a
20 whole was a specific and legitimate reason supported by substantial evidence, the

1 two prior errors were harmless. *See Combs v. Astrue*, 387 Fed. App'x 706, 708 (9th
2 Cir. 2010) (unpublished) (holding that the ALJ permissibly rejected the medical
3 opinion of a treating physician which was unsupported by the record as a whole).

4 **2. ARNP Garrison, Dr. Ullom, M.D. and Dr. Packer, M.D.**

5 The ALJ gave limited weight to the July 2014 opinion of treating provider
6 ARNP Garrison, which was co-signed by L. Ullom, M.D. because this opinion was
7 based on an assessment shortly after Plaintiff's gunshot wounds and the opinion
8 noted the limitations would last approximately six to twelve months. AR 25. The
9 ALJ determined that this did not represent Plaintiff's "baseline functioning." *Id.*
10 The ALJ also gave little weight to the opinion of non-examining physician Dr.
11 Packer because it was based on the "immediate aftermath of being shot and
12 hospitalized, and does not reflect [Plaintiff's] baseline functioning." AR 25–26.

13 ARNP Garrison, joined by Dr. Ullom, opined in July 2014 that Plaintiff was
14 severely limited in his ability to sit, stand, walk, lift, carry, push, pull, reach, stoop,
15 and crouch, and that these impairments would likely last for six to twelve months.
16 AR 713–14. Later that month, Dr. Packer opined Plaintiff was unable to lift ten
17 pounds, frequently lift or carry small articles, sit for most of the day, or stand or
18 walk for brief periods, and that an anticipated duration of twelve months of these
19 limitations was supported by the medical records. AR 386, 388.

20 As to the first opinion, Plaintiff asserts the ALJ erred "by failing to recognize

1 this opinion was shared by ARNP Garrison and Dr. Ullom,” and erred because a
2 twelve-month duration would result in disability and because a 2016 opinion by
3 ARNP Fox shows Plaintiff’s limitations . ECF No. 12 at 12–13. However, the ALJ
4 did not find that the impairments from Plaintiff’s gunshot wounds would not meet
5 the durational requirement of lasting twelve months, but rather that the high level
6 of impairment noted in this specific opinion was anticipated to last for six to twelve
7 months. *See* AR 25. The ALJ cited records of Plaintiff’s improvement after these
8 assessments in support of his RFC determination. AR 22–23. The ALJ’s assessment
9 of Plaintiff’s impairments also reflects that the ALJ noted ongoing limitations
10 caused by the gunshot wounds, but the ALJ determined that the RFC accounted for
11 these limitations. AR 23.

12 The reason the ALJ gave for discounting both July 2014 opinions was that
13 they did not reflect Plaintiff’s long-term functioning.⁴ Regardless of whether ARNP
14 Garrison’s opinion was joined by a treating physician, this is a specific and
15 legitimate reason for discounting the opinion, and it is supported by substantial
16

17 ⁴ Plaintiff also argues that a 2016 assessment by a different provider militates
18 toward rejecting the ALJ’s evaluation of the 2014 opinions. ECF No. 12 at 13.
19 Although this opinion may undermine the ALJ’s ultimate determination of
20 Plaintiff’s RFC, the ALJ’s citation to treatment records within the six to twelve
month period described in the July 2014 opinions is significantly more relevant to
evaluating the instant opinions.

1 evidence to which the ALJ cited when discussing Plaintiff’s recovery. An ALJ may
2 discount an opinion where subsequent evidence reflects improvement that
3 undermines the opinion. *See Pruitt v. Comm’r of Soc. Sec.*, 612 Fed. App’x 891,
4 893 (9th Cir. 2015) (treatment notes indicating claimant’s stress-related symptoms
5 improved with treatment supported ALJ’s conclusion claimant could perform
6 sedentary work). As such, this was a specific and legitimate reason to discount these
7 opinions supported by substantial evidence.

8 **3. ARNP Fox**

9 The ALJ gave limited weight to the opinions of treating provider Shawn Fox,
10 ARNP because ARNP Fox’s opinion does not include sufficient objective findings
11 to support the limitations she assessed, and because those opinions were
12 inconsistent with Plaintiff’s treatment records. AR 25. The ALJ noted ARNP Fox’s
13 opinion included some objective findings to support her opinion, but that those
14 findings “fall short of establishing the extreme limitations she assessed.” *Id.*

15 An ALJ may consider “other source” testimony from medical sources such
16 as nurse practitioners, physicians’ assistants, and counselors. 20 C.F.R.
17 § 404.1513(d)(1). If an ALJ chooses to discount testimony of such a witness, the
18 ALJ must provide a “germane” reason for doing so. *Turner v. Comm’r of Soc.*
19 *Sec.*, 613 F.3d 1217, 1224 (9th Cir. 2010). The ALJ may reject the opinions of a
20 provider where those conclusions are memorialized only in “check-off reports that

1 [do] not contain any explanation of the bases” for the provider’s assessments. *Crane*
2 *v. Shalala*, 76 F.3d 251, 253 (9th Cir. 1996). However, a conclusory opinion that is
3 “based on significant experience” with a claimant and is “supported by numerous
4 records” is entitled to greater weight than an otherwise unsupported and
5 unexplained check-box form. *Garrison v. Colvin*, 759 F.3d 995, 1013 (9th Cir.
6 2014).

7 The ALJ discounted ARNP Fox’s opinion because her examination showed
8 “intact or nearly intact range of motion in nearly all planes of movement, including
9 his hands and wrists, lower extremities, and neck,” and only “some limitations of
10 lumbar, hip, and right shoulder range of motion.” AR 25. As a preliminary matter,
11 the ALJ seems to have incorrectly noted that the right shoulder had a limited range
12 of motion when the report indicates the left shoulder had reduced range. AR 705.
13 Moreover, the diagnoses ARNP Fox cited in support of her limitations are “hip
14 pain,” “back pain,” “left arm pain,” and “abdominal/nerve pain.” AR 702. The
15 ALJ’s decision to discount ARNP Fox’s opinion rest on a lack of findings that were
16 unrelated to these diagnoses. *See* AR 25. Thus, the Court cannot find this reason for
17 rejecting ARNP Fox’s findings was germane. On remand, the ALJ should evaluate
18 ARNP Fox’s opinions in the context of the record as a whole, including ARNP
19 Fox’s treatment records for Plaintiff.

1 **4. Dr. Clifford, Ph.D. and Dr. Donahue, Ph.D.**

2 The ALJ gave significant weight to the psychiatric assessments of non-
3 examining psychiatrists Dr. Clifford and Dr. Donahue because their opinions were
4 consistent with the record as a whole. AR 26. Plaintiff argues this was in error
5 because their opinions were contradicted by Dr. Schultz’s opinion. ECF No. 16.
6 However, as described above, the ALJ gave a specific and legitimate reason for
7 discounting Dr. Schultz’s opinion. Moreover, Dr. Clifford and Dr. Donahue
8 assessed Plaintiff as being more limited than did a different examining psychiatrist,
9 Dr. Sawyer. *Compare* AR 101–02, 113–14 *with* AR 585. Thus, the Court does not
10 find the ALJ’s decision to give significant weight to Dr. Clifford and Dr. Donahue’s
11 opinions was in error.

12 **5. State evaluations from 2009 and 2011**

13 The ALJ gave very little weight to the state evaluations completed in June
14 2009, October 2009, and June 2011 because the assessments “significantly pre-date
15 the time period at issue in this decision, and the findings and opinions contained in
16 these reports have little relevance to the claimant’s current functioning.” AR 28.
17 Plaintiff argues this was in error because Plaintiff’s forearm impairment described
18 in these opinions continues to cause difficulties. ECF No. 12 at 15.

19 The ALJ determined that the record did not support Plaintiff’s allegations
20 that his right arm injury continued to cause difficulties. AR 28. The ALJ did not cite

1 any records in support of this determination, but an independent review of the
2 record does not reflect records that would support finding ongoing limitations to
3 Plaintiff's right hand. Plaintiff cites records in support of his prior argument that the
4 ALJ erred in not finding Plaintiff's right hand impairment severe, but these records
5 do not show Plaintiff continued to suffer the impairments described in these
6 opinions. *See* AR 686, 812, 814 & 834. The ALJ's determination that these findings
7 are not supported by the record as a whole and significantly pre-date the relevant
8 period are clear and convincing reasons supported by substantial evidence. *See*
9 *Bayliss*, 427 F.3d at 1216.

10 **C. The ALJ shall reevaluate Plaintiff's subjective symptom testimony as to**
11 **his physical symptoms on remand**

12 Next, Plaintiff assigns error to the ALJ's decision to discount Plaintiff's own
13 subjective symptom testimony. ECF No. 12 at 16–19. The Commissioner contends
14 the ALJ gave four clear and convincing reasons for discounting Plaintiff's
15 subjective symptom testimony. ECF No. 21 at 15.

16 Where a claimant presents objective medical evidence of impairments that
17 could reasonably produce the symptoms complained of, an ALJ may reject the
18 claimant's testimony about the severity of his symptoms only for "specific, clear
19 and convincing reasons." *Burrell v. Colvin*, 775 F.3d 1133, 1137 (9th Cir. 2014).

20 The ALJ's findings must be sufficient "to permit the court to conclude that the ALJ

1 did not arbitrarily discredit claimant’s testimony.” *Tommasetti v. Astrue*, 533
2 F.3d 1035, 1039 (9th Cir. 2008). General findings are insufficient. *Lester v.*
3 *Chater*, 81 F.3d 821, 834 (9th Cir. 1995). In evaluating the claimant’s credibility,
4 the “ALJ may weigh inconsistencies between the claimant’s testimony and his or
5 her conduct, daily activities, and work record, among other factors.” *Bray*, 554 F.3d
6 at 1227. The Court may not second guess the ALJ’s credibility findings that are
7 supported by substantial evidence. *Tommasetti*, 533 F.3d at 1039.

8 The ALJ provided four reasons for discounting Plaintiff’s subjective
9 symptom testimony: (1) the medical record does not substantiate Plaintiff’s
10 allegations, (2) a 2017 evaluation shows Plaintiff’s physical impairments are not as
11 limiting as he asserts, (3) the medical record shows Plaintiff’s psychiatric symptoms
12 are not as intense, persistent, or limiting as he alleges, and (4) that Plaintiff’s limited
13 work history undermines the persuasiveness of his allegations that his impairments
14 prevent him from working because they suggest Plaintiff has simply chosen not to
15 work. AR 22–24.

16 As to the first reason, the ALJ found that the record reflected “steady
17 recovery and improvement” after Plaintiff sustained multiple gunshot wounds in
18 June 2014. AR 22. However, in light of the Court’s determination that the ALJ
19 improperly discounted ARNP Fox’s 2016 opinion that Plaintiff experienced

1 ongoing limitations from these injuries, it is also appropriate on remand for the ALJ
2 to reconsider this determination in light of the record as a whole.

3 As to the second justification for discounting Plaintiff’s subjective symptom
4 testimony, Plaintiff does not challenge this finding, and the Court does not address
5 it. The Court also declines to disturb the ALJ’s determination that the medical
6 record shows Plaintiff’s psychiatric symptoms are not as intense, persistent, or
7 limiting as he alleges. As an initial matter, the Court rejects the ALJ’s determination
8 that Plaintiff’s failure to seek mental health treatment “indicates his symptoms were
9 not serious enough to warrant treatment.” AR 24. “[I]t is a questionable practice to
10 chastise one with a mental impairment for the exercise of poor judgment in seeking
11 rehabilitation.” *Nguyen v. Chater*, 100 F.3d 1462, 1465 (9th Cir. 1996) (quoting
12 *Blankenship v. Bowen*, 874 F.2d 1116, 1124 (6th Cir. 1989)). However, the ALJ
13 also provided specific citations to the medical records to support his determination
14 that Plaintiff’s anxiety, fear, paranoia, and depression are not as debilitating as
15 Plaintiff alleges. AR 24. Although Dr. Schultz’s opinion would have supported
16 Plaintiff’s more severe mental health restrictions, as described above, the ALJ’s
17 decision to discount this opinion was not in error.

18 The ALJ’s final justification is insufficiently explained and the ALJ should
19 reconsider this factor on remand. Specifically, the ALJ determined that Plaintiff’s
20 minimal work history undermines his assertion that impairments resulting from his

1 gunshot wounds prevent him from working. AR 24. However, while the ALJ noted
2 that Plaintiff's decision to stop working in September 2012 was due to a desire to
3 spend more time with his family, it is not clear to what extent Plaintiff's prior
4 injuries to his right arm may have had in his minimal work history. *See id.* As such,
5 the Court does not find this justification sufficiently specific, clear, and convincing.

6 **D. The Court need not evaluate the ALJ's step five analysis**

7 Given the deficiency in the ALJ's decision identified above, the Court need
8 not evaluate the ALJ's conclusions at step five, which will necessarily depend on
9 the outcome of the preceding step.

10 **E. Remand, rather than an award of benefits, is appropriate**

11 In light of the error identified above, further proceedings are clearly
12 necessary. Though there is substantial evidence to support Plaintiff's entitlement to
13 benefits, that conclusion is not "clear from the record." *Garrison*, 759 F.3d at 1019.
14 Accordingly, the Court remands this matter to the ALJ for further proceedings
15 consistent with this Order, rather than simply awarding benefits.

16 **CONCLUSION**

17 For the reasons set forth above, **IT IS HEREBY ORDERED:**

- 18 **1.** Plaintiff's Motion for Summary Judgment, **ECF No. 12**, is
19 **GRANTED.**

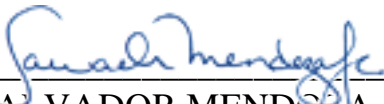
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1 **2.** The Commissioner’s Motion for Summary Judgment, **ECF No. 21**, is
2 **DENIED.**

3 **3.** The Clerk’s Office shall **ENTER JUDGMENT** in favor of
4 **PLAINTIFF** and thereafter **CLOSE** the file.

5 **IT IS SO ORDERED.** The Clerk’s Office is directed to enter this Order and
6 provide copies to all counsel.

7 **DATED** this 25th day of June 2020.

8 
9 _____
 SALVADOR MENDOCZA, JR.
 United States District Judge