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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 DAVID MELENDREZ, JR,

No. CV-12-0201-EFS

8 Plaintiff,

9 v.

**ORDER GRANTING DEFENDANT'S
SUMMARY-JUDGMENT MOTION AND
DENYING PLAINTIFF'S SUMMARY-
JUDGMENT MOTION**

10 MICHAEL ASTRUE, Commissioner of
Social Security,¹

11 Defendant.
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13 Before the Court, without oral argument, are cross-summary-
14 judgment motions. ECF Nos. 15 & 17. Plaintiff David Melendrez Jr.
15 appeals the Administrative Law Judge's (ALJ) denial of benefits. ECF
16 No. 5. Mr. Melendrez contends the ALJ's decision was not supported by
17 substantial evidence and asks the Court to set aside the ALJ's
18 decision. The Commissioner of Social Security ("Commissioner") asks
19 the Court to affirm the ALJ's decision.

20 After reviewing the record and relevant authority, the Court is
21 fully informed. For the reasons set forth below, the Court affirms
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23 ¹ Carolyn W. Colvin became the Acting Commissioner of Social
24 Security on February 14, 2013. Pursuant to Federal Rule of Civil
25 Procedure 25(d), Ms. Colvin is substituted for Michael J. Astrue as
26 the Defendant in this lawsuit. No further action need be taken to
continue this lawsuit. 42 U.S.C. § 405(g).

1 the ALJ's decision and therefore denies Mr. Melendrez' motion and
2 grants the Commissioner's motion.

3 **A. Statement of Facts²**

4 At the time of the administrative hearing, Mr. Melendrez was 20
5 years old. ECF No. 11 at 22. He appeared at both administrative
6 hearings via video. *Id.* at 11. Records indicated that Mr. Melendrez
7 had a previous period of disability as a child, beginning May 2, 2006,
8 and ending April 1, 2009, one month before he filed the current claim
9 for benefits. *Id.* He has never worked in his lifetime, *id.* at 22,
10 and was considered to have limited education, but had reported
11 education ranging from completion of the 10th grade to graduating high
12 school, *id.* at 21-22.

13 **B. Procedural History**

14 In May 2009, Mr. Melendrez applied for Supplemental Security
15 Income benefits (hereinafter, "claim for benefits"), alleging
16 disability beginning June 2, 1995, due to antisocial personality
17 disorder and history of attention deficit hyperactivity disorder. ECF
18 No. 11 at 11. The claim was denied initially on August 5, 2009, and
19 denied upon reconsideration on February 18, 2010. *Id.* Mr. Melendrez
20 then requested an administrative hearing, which was held on June 11,
21 2010, and January 4, 2011, before ALJ Caroline Siderius. *Id.* On
22 January 14, 2011, the ALJ denied Mr. Melendrez' claim for benefits,
23 determining that notwithstanding Mr. Melendrez' non-exertional

24
25 ² The facts are only briefly summarized. Detailed facts are
26 contained in the administrative hearing transcript, the ALJ's
decision, and the parties' briefs.

1 limitations he had the capacity to work as an auto detailer, janitor,
2 or hand packager. *Id.* at 22-23. The Appeals Council thereafter
3 denied Mr. Melendrez' request for review. *Id.* at 1-3.

4 On April 13, 2012, Mr. Melendrez filed this lawsuit, claiming
5 the ALJ's decision is not supported by substantial evidence. ECF Nos.
6 1 & 5. On October 19, 2012, Mr. Melendrez filed his Motion for
7 Summary Judgment, ECF No. 15, and on November 30, 2012, the
8 Commissioner filed her Motion for Summary Judgment, ECF No. 17.

9 **C. Disability Determination**

10 A "disability" is defined as the "inability to engage in any
11 substantial gainful activity by reason of any medically determinable
12 physical or mental impairment which can be expected to result in
13 death or which has lasted or can be expected to last for a continuous
14 period of not less than twelve months." 42 U.S.C. §§ 423(d)(1)(A),
15 1382c(a)(3)(A). The decision-maker uses a five-step sequential
16 evaluation process to determine whether a claimant is disabled. 20
17 C.F.R. §§ 404.1520, 416.920.

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

22 Step two assesses whether the claimant has a medically severe
23 impairment or combination of impairments. 20 C.F.R. §§ 404.1520(c),
24 416.920(c). If the claimant does not, the disability claim is
25 denied. If the claimant does, the evaluation proceeds to the third
26 step.

1 Step three compares the claimant's impairment with a number of
2 listed impairments acknowledged by the Commissioner to be so severe
3 as to preclude substantial gainful activity. 20 C.F.R. §§
4 404.1520(d), 404 Subpt. P App. 1, 416.920(d). If the impairment
5 meets or equals one of the listed impairments, the claimant is
6 conclusively presumed to be disabled. If the impairment does not,
7 the evaluation proceeds to the fourth step.

8 Step four assesses whether the impairment prevents the claimant
9 from performing work he has performed in the past by examining the
10 claimant's residual functional capacity. 20 C.F.R. §§ 404.1520(e),
11 416.920(e). If the claimant is able to perform his previous work, he
12 is not disabled. If the claimant cannot perform this work, the
13 evaluation proceeds to the fifth step.

14 Step five, the final step, assesses whether the claimant can
15 perform other work in the national economy in view of his age,
16 education, and work experience. 20 C.F.R. §§ 404.1520(f),
17 416.920(f); see *Bowen v. Yuckert*, 482 U.S. 137 (1987). If the
18 claimant can, the disability claim is denied. If the claimant
19 cannot, the disability claim is granted.

20 The burden of proof shifts during this sequential disability
21 analysis. The claimant has the initial burden of establishing a *prima*
22 *facie* case of entitlement to disability benefits. *Rhinehart v. Finch*,
23 438 F.2d 920, 921 (9th Cir. 1971). The burden then shifts to the
24 Commissioner to show 1) the claimant can perform other substantial
25 gainful activity, and 2) that a "significant number of jobs exist in
26 the national economy," which the claimant can perform. *Kail v.*

1 *Heckler*, 722 F.2d 1496, 1498 (9th Cir. 1984). A claimant is disabled
2 only if his impairments are of such severity that he is not only
3 unable to do his previous work but cannot, considering his age,
4 education, and work experiences, engage in any other substantial
5 gainful work which exists in the national economy. 42 U.S.C. §§
6 423(d)(2)(A), 1382c(a)(3)(B).

7 **D. Standard of Review**

8 On review, the Court considers the record as a whole, not just
9 the evidence supporting the ALJ's decision. See *Weetman v. Sullivan*,
10 877 F.2d 20, 22 (9th Cir. 1989) (quoting *Kornock v. Harris*, 648 F.2d
11 525, 526 (9th Cir. 1980)). The Court upholds the ALJ's determination
12 that the claimant is not disabled if the ALJ applied the proper legal
13 standards and there is substantial evidence in the record as a whole
14 to support the decision. *Delgado v. Heckler*, 722 F.2d 570, 572 (9th
15 Cir. 1983) (citing 42 U.S.C. § 405(g)); *Brawner v. Sec'y of Health &*
16 *Human Servs.*, 839 F.2d 432, 433 (9th Cir. 1987) (recognizing that a
17 decision supported by substantial evidence will be set aside if the
18 proper legal standards were not applied in weighing the evidence and
19 making the decision). Substantial evidence is more than a mere
20 scintilla, *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir.
21 1975), but less than a preponderance, *McAllister v. Sullivan*, 888 F.2d
22 599, 601-02 (9th Cir. 1989); *Desrosiers v. Sec'y of Health & Human*
23 *Servs.*, 846 F.2d 573, 576 (9th Cir. 1988). "It means such relevant
24 evidence as a reasonable mind might accept as adequate to support a
25 conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971)
26 (citations omitted). "[S]uch inferences and conclusions as the [ALJ]

1 may reasonably draw from the evidence" will also be upheld. *Mark v.*
2 *Celebrezze*, 348 F.2d 289, 293 (9th Cir. 1965). If the evidence
3 supports more than one rational interpretation, the Court must uphold
4 the ALJ's decision. *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir.
5 1984).

6 **E. Analysis**

7 Mr. Melendrez raises five main arguments in support of his
8 contention that the ALJ's findings were not supported by substantial
9 evidence. First, he argues the ALJ failed to properly evaluate mental
10 impairment; second, he contends the ALJ failed to properly assess his
11 residual functional capacity (RFC); third, he states the ALJ failed to
12 make a proper credibility finding; fourth, the ALJ failed to address
13 opinions of state agency non-examining medical consultants; and fifth,
14 he argues the ALJ failed to obtain relevant vocational expert
15 testimony. Upon review of the entire record, the Court rejects these
16 claims and finds the ALJ's determination that Mr. Melendrez is not
17 disabled is supported by substantial evidence.

18 First, substantial evidence supported the ALJ's evaluation of
19 Mr. Melendrez' mental impairment. Mr. Melendrez argues Dr.
20 MacLennan's conclusions were consistent with her examination results,
21 and should not have been discredited by the ALJ. However, while Mr.
22 Melendrez offers a reasonable interpretation of the record, the Court
23 finds the ALJ's interpretation was also reasonable, and therefore
24 upholds the ALJ's decision. *See Heckler*, 749 F.2d at 579. The ALJ
25 reasonably found that Dr. MacLennan placed an undue reliance upon Mr.
26 Melendrez' statements, acknowledged that his test results were

1 unreliable and suggestive of symptom exaggeration, and that her
2 opinion was inconsistent with opinions of Dr. Layton and Dr.
3 Underwood. ECF No. 11 at 21. These are specific and legitimate
4 reasons for rejecting Dr. MacLennan's conclusions, and are therefore
5 upheld.

6 Second, the ALJ properly assessed Mr. Melendrez' residual
7 functional capacity. In assessing residual functional capacity, the
8 ALJ considered Dr. Layton's and Dr. Underwood's testimony and
9 assessments and incorporated their opinions into the residual
10 functional capacity by finding Mr. Melendrez was "capable of simple,
11 repetitive 1-3 step tasks, but not detailed work. He is capable of
12 occasional social interaction with the public and coworkers." ECF No.
13 11 at 19, 22. Accordingly, the Court finds the ALJ properly
14 translated their conclusions into a residual functional capacity that
15 was consistent with their opinions, and therefore upholds the ALJ's
16 decision.

17 Third, the ALJ offered clear and convincing reasons for finding
18 Mr. Melendrez' statements not credible. While Mr. Melendrez maintains
19 the ALJ improperly rejected his testimony, the ALJ offered numerous
20 reasons for finding his statements not credible including: the
21 allegations were not supported by objective medical findings, his
22 failure to work was in part volitional, evidence showed inconsistent
23 and exaggerated claims, and Mr. Melendrez had lied about his substance
24 abuse. ECF No. 11 at 20-21. The Court finds these reasons were
25 clear, convincing, and supported by substantial evidence, and
26 therefore upholds the ALJ's credibility determination.

1 Fourth, while Mr. Melendrez maintains that the ALJ failed to
2 address opinions of the state agency non-examining medical consultant,
3 Dr. Underwood, as noted above, the ALJ did incorporate Dr. Underwood's
4 testimony and opinion into the finding on residual functional
5 capacity. Accordingly, Mr. Melendrez' fourth reason for reversal is
6 denied.

7 Finally, as to relevant vocation expert testimony, Mr. Melendrez
8 contends the ALJ committed reversible error by not including Dr.
9 MacLennan's or Dr. Underwood's restrictions in the vocational
10 hypothetical. However, as addressed above, the ALJ made proper
11 determinations regarding the credibility of each doctor and properly
12 assessed the medical record. Accordingly, the hypothetical given was
13 supported by substantial evidence, and does not justify reversal.

14 **F. Conclusion**

15 In summary, the Court finds the record contains substantial
16 evidence from which the ALJ properly concluded, when applying the
17 correct legal standards, that Mr. Melendrez does not qualify for
18 benefits.

19 Accordingly, **IT IS HEREBY ORDERED:**

- 20 1. Mr. Melendrez' Motion for Summary Judgment, **ECF No. 15**, is
21 **DENIED.**
- 22 2. The Commissioner's Motion for Summary Judgment, **ECF No. 17**,
23 is **GRANTED.**
- 24 3. **JUDGMENT** is to be entered in the Commissioner's favor.
- 25 4. The case shall be **CLOSED.**

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