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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

6

7 RICHARD W. SHELTON,

8 Plaintiff,

9 v.

10 CAROLYN W. COLVIN,

11 Defendant.

NO: 13-CV-3093-TOR

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT

12

13 BEFORE THE COURT are the parties' cross-motions for summary

14 judgment (ECF Nos. 14, 16). Plaintiff is represented by D. James Tree. Defendant

15 is represented by Leisa A. Wolf. The Court has reviewed the administrative record

16 and the parties' completed briefing and is fully informed. For the reasons

17 discussed below, the Court grants Defendant's motion and denies Plaintiff's

18 motion.

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1 **JURISDICTION**

2 The Court has jurisdiction over this case pursuant to 42 U.S.C. § 405(g).

3 **STANDARD OF REVIEW**

4 A district court’s review of a final decision of the Commissioner of Social
5 Security is governed by 42 U.S.C. § 405(g). The scope of review under §405(g) is
6 limited: the Commissioner’s decision will be disturbed “only if it is not supported
7 by substantial evidence or is based on legal error.” *Hill v. Astrue*, 698 F.3d 1153,
8 1158-59 (9th Cir. 2012) (citing 42 U.S.C. § 405(g)). “Substantial evidence” means
9 relevant evidence that “a reasonable mind might accept as adequate to support a
10 conclusion.” *Id.* at 1159 (quotation and citation omitted). Stated differently,
11 substantial evidence equates to “more than a mere scintilla[,] but less than a
12 preponderance.” *Id.* (quotation and citation omitted). In determining whether this
13 standard has been satisfied, a reviewing court must consider the entire record as a
14 whole rather than searching for supporting evidence in isolation. *Id.*

15 In reviewing a denial of benefits, a district court may not substitute its
16 judgment for that of the Commissioner. If the evidence in the record “is
17 susceptible to more than one rational interpretation, [the court] must uphold the
18 ALJ’s findings if they are supported by inferences reasonably drawn from the
19 record.” *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district
20 court “may not reverse an ALJ’s decision on account of an error that is harmless.”

1 *Id.* at 1111. An error is harmless “where it is inconsequential to the [ALJ’s]
2 ultimate nondisability determination.” *Id.* at 1115 (quotation and citation omitted).
3 The party appealing the ALJ’s decision generally bears the burden of establishing
4 that it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

5 **FIVE-STEP SEQUENTIAL EVALUATION PROCESS**

6 A claimant must satisfy two conditions to be considered “disabled” within
7 the meaning of the Social Security Act. First, the claimant must be “unable to
8 engage in any substantial gainful activity by reason of any medically determinable
9 physical or mental impairment which can be expected to result in death or which
10 has lasted or can be expected to last for a continuous period of not less than twelve
11 months.” 42 U.S.C. § 423(d)(1)(A). Second, the claimant’s impairment must be
12 “of such severity that he is not only unable to do his previous work[,] but cannot,
13 considering his age, education, and work experience, engage in any other kind of
14 substantial gainful work which exists in the national economy.” 42 U.S.C.
15 § 423(d)(2)(A).

16 The Commissioner has established a five-step sequential analysis to
17 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R.
18 § 404.1520(a)(4)(i)-(v). At step one, the Commissioner considers the claimant’s
19 work activity. 20 C.F.R. § 404.1520(a)(4)(i). If the claimant is engaged in
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1 “substantial gainful activity,” the Commissioner must find that the claimant is not
2 disabled. 20 C.F.R. § 404.1520(b).

3 If the claimant is not engaged in substantial gainful activities, the analysis
4 proceeds to step two. At this step, the Commissioner considers the severity of the
5 claimant’s impairment. 20 C.F.R. § 404.1520(a)(4)(ii). If the claimant suffers
6 from “any impairment or combination of impairments which significantly limits
7 [his or her] physical or mental ability to do basic work activities,” the analysis
8 proceeds to step three. 20 C.F.R. § 404.1520(c). If the claimant’s impairment
9 does not satisfy this severity threshold, however, the Commissioner must find that
10 the claimant is not disabled. *Id.*

11 At step three, the Commissioner compares the claimant’s impairment to
12 several impairments recognized by the Commissioner to be so severe as to
13 preclude a person from engaging in substantial gainful activity. 20 C.F.R.
14 § 404.1520(a)(4)(iii). If the impairment is as severe or more severe than one of the
15 enumerated impairments, the Commissioner must find the claimant disabled and
16 award benefits. 20 C.F.R. § 404.1520(d).

17 If the severity of the claimant’s impairment does meet or exceed the severity
18 of the enumerated impairments, the Commissioner must pause to assess the
19 claimant’s “residual functional capacity.” Residual functional capacity (“RFC”),
20 defined generally as the claimant’s ability to perform physical and mental work

1 activities on a sustained basis despite his or her limitations (20 C.F.R.
2 § 404.1545(a)(1)), is relevant to both the fourth and fifth steps of the analysis.
3 At step four, the Commissioner considers whether, in view of the claimant's RFC,
4 the claimant is capable of performing work that he or she has performed in the past
5 ("past relevant work"). 20 C.F.R. § 404.1520(a)(4)(iv). If the claimant is capable
6 of performing past relevant work, the Commissioner must find that the claimant is
7 not disabled. 20 C.F.R. § 404.1520(f). If the claimant is incapable of performing
8 such work, the analysis proceeds to step five.

9 At step five, the Commissioner considers whether, in view of the claimant's
10 RFC, the claimant is capable of performing other work in the national economy.
11 20 C.F.R. § 404.1520(a)(4)(v). In making this determination, the Commissioner
12 must also consider vocational factors such as the claimant's age, education and
13 work experience. *Id.* If the claimant is capable of adjusting to other work, the
14 Commissioner must find that the claimant is not disabled. 20 C.F.R.
15 § 404.1520(g)(1). If the claimant is not capable of adjusting to other work, the
16 analysis concludes with a finding that the claimant is disabled and is therefore
17 entitled to benefits. *Id.*

18 The claimant bears the burden of proof at steps one through four above.
19 *Lockwood v. Comm'r of Soc. Sec. Admin.*, 616 F.3d 1068, 1071 (9th Cir. 2010). If
20 the analysis proceeds to step five, the burden shifts to the Commissioner to

1 establish that (1) the claimant is capable of performing other work; and (2) such
2 work “exists in significant numbers in the national economy.” 20 C.F.R.
3 § 404.1560(c); *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

4 **ALJ’S FINDINGS**

5 Plaintiff applied for disability insurance benefits on December 30, 2010,
6 alleging a disability onset date of January 1, 2009.¹ Tr. 193-201. His claims were
7 denied initially and on reconsideration. Tr. 124-26, 132-34. Plaintiff appeared for
8 a hearing before an administrative law judge (“ALJ”) on October 31, 2012. Tr. 39-
9 84. The ALJ issued a decision on November 30, 2012, finding that Plaintiff was
10 not disabled under the Social Security Act. Tr. 18-38.

11 The ALJ found that Plaintiff met the insured status requirements of Title II
12 of the Social Security Act through December 31, 2014. Tr. 23. At step one, the
13 ALJ found that Plaintiff had not engaged in substantial gainful activity since
14 January 1, 2009.² *Id.* At step two, the ALJ found that Plaintiff had the following

15 ¹ Plaintiff also applied for supplemental security income benefits on January 13,
16 2011. Tr. 202-06. However, this claim was denied due to the extent of Plaintiff’s
17 income. Tr. 114-23. Plaintiff did not request reconsideration of this denial.

18 ² At the administrative review hearing, Plaintiff amended the alleged onset date—
19 and consequently the date he last engaged in substantial gainful employment—to
20 February 16, 2009. Tr. 42.

1 severe impairments: diabetes mellitus, high blood pressure, obesity, affective
2 disorder, anxiety disorder, and alcohol dependence in remission. Tr. 23-24. At
3 step three, the ALJ found that Plaintiff's severe impairments did not meet or
4 medically equal a listed impairment. Tr. 24-26. The ALJ then determined that
5 Plaintiff had the residual functional capacity ("RFC") to:

6 perform light work as defined in 20 CFR 404.1567(b) with no sitting,
7 standing, or walking restrictions and with an ability to lift and carry
8 twenty pounds occasionally and ten pounds frequently. The claimant
9 can occasionally stoop, crouch, kneel, crawl, balance, use ramps and
10 stairs, and climb ladders but should not climb ropes or scaffolds. He
11 can have occasional interaction with the general public, coworkers or
12 supervisors, and he can remember, understand, and carry out
13 instructions and tasks that are generally associated with occupations
14 with an SVP of 1 or 2.

15 Tr. 26. At step four, the ALJ found that Plaintiff was unable to perform past
16 relevant work. Tr. 32. At step five, after considering Plaintiff's age, education,
17 work experience, and RFC, the ALJ found Plaintiff could perform other work
18 existing in significant numbers in the national economy in representative
19 occupations, such as hotel/motel housekeeper, folder, table worker, and semi-
20 conductor die loader. Tr. 33. Thus, the ALJ concluded that Plaintiff was not
21 disabled and denied his claims. Tr. 33-34.

22 On December 11, 2012, Plaintiff requested review of the ALJ's decision by
23 the Appeals Council. Tr. 15. The Appeals Council denied Plaintiff's request for
24 review on July 8, 2013, Tr. 1-6, making the ALJ's decision the Commissioner's

1 final decision for purposes of judicial review. 42 U.S.C. § 405(g); 20 C.F.R.
2 § 404.981.

3 **ISSUES**

4 Plaintiff seeks judicial review of the Commissioner’s final decision denying
5 his disability insurance benefits under Title II of the Social Security Act. Plaintiff
6 has raised the following three issues for review:

- 7 1. Whether the ALJ erred in assessing Plaintiff’s credibility;
- 8 2. Whether the ALJ erred in rejecting the opinions of medical providers;
9 and
- 10 3. Whether the ALJ erred in his hypothetical question posed to the
vocational expert.

11 ECF No. 14 at 9-10.

12 **DISCUSSION**

13 **A. Adverse Credibility Determination**

14 In social security proceedings, a claimant must prove the existence of
15 physical or mental impairment with “medical evidence consisting of signs,
16 symptoms, and laboratory findings.” 20 C.F.R. §§ 416.908; 416.927. A
17 claimant’s statements about his or her symptoms alone will not suffice. 20 C.F.R.
18 §§ 416.908; 416.927. Once an impairment has been proven to exist, the claimant
19 need not offer further medical evidence to substantiate the alleged severity of his or
20 her symptoms. *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9th Cir. 1991) (en banc).

1 As long as the impairment “could reasonably be expected to produce [the]
2 symptoms,” the claimant may offer a subjective evaluation as to the severity of the
3 impairment. *Id.* This rule recognizes that the severity of a claimant’s symptoms
4 “cannot be objectively verified or measured.” *Id.* at 347 (quotation and citation
5 omitted).

6 If an ALJ finds the claimant’s subjective assessment unreliable, “the ALJ
7 must make a credibility determination with findings sufficiently specific to permit
8 [a reviewing] court to conclude that the ALJ did not arbitrarily discredit claimant’s
9 testimony.” *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002). In making
10 this determination, the ALJ may consider, *inter alia*: (1) the claimant’s reputation
11 for truthfulness; (2) inconsistencies in the claimant’s testimony or between his
12 testimony and his conduct; (3) the claimant’s daily living activities; (4) the
13 claimant’s work record; and (5) testimony from physicians or third parties
14 concerning the nature, severity, and effect of the claimant’s condition. *Id.* If there
15 is no evidence of malingering, the ALJ’s reasons for discrediting the claimant’s
16 testimony must be “specific, clear and convincing.” *Chaudhry v. Astrue*, 688 F.3d
17 661, 672 (9th Cir. 2012) (quotation and citation omitted). The ALJ “must
18 specifically identify the testimony she or he finds not to be credible and must
19 explain what evidence undermines the testimony.” *Holohan v. Massanari*, 246
20 F.3d 1195, 1208 (9th Cir. 2001).

1 Plaintiff contends the ALJ improperly discredited his credibility. ECF No.
2 14 at 15-18. Specifically, Plaintiff challenges the ALJ's assessment of his daily
3 activities as proof that Plaintiff's symptoms were not that serious. *Id.* at 15.

4 This Court finds the ALJ provided specific, clear, and convincing reasons
5 supported by substantial evidence for discounting Plaintiff's subjective statements.
6 The ALJ based his adverse credibility finding on the following: Plaintiff's
7 statements concerning the severity of his symptoms and limitations were
8 inconsistent with (1) his daily activities; (2) his lack of compliance with prescribed
9 and recommended treatment; and (3) the objective medical evidence. Tr. 28-29.

10 First, the ALJ found Plaintiff's description of his daily activities inconsistent
11 with the disabling symptoms and limitations alleged. Tr. 28. In support, the ALJ
12 highlighted the following:

13 The claimant reported that he is unable to work due, in large part, to
14 diminished energy and fatigue. . . However, the claimant's testimony
15 suggesting that he could not perform any work on a regular and
16 consistent basis is not consistent with his reported activities and
17 receipt of unemployment benefits. Although the claimant testified that
18 he stayed in bed and did not shower several days a week when he
19 rented a room, the record indicates that he was able to perform many
20 activities when needed, such as shopping, meal preparation,
household chores, laundry, and personal grooming. In addition, the
claimant now has to leave the shelter where he is staying during the
day, and he spends his day riding the bus, walking, visiting with
others, and going to the park and library.

1 Tr. 28. These inconsistencies between Plaintiff’s alleged limitations and his
2 reported daily activities provided a permissible and legitimate reason for
3 discounting Plaintiff’s credibility. *Thomas*, 278 F.3d at 958-59; *see also Orn v.*
4 *Astrue*, 495 F.3d 625, 639 (9th Cir. 2007) (finding that daily activities may be
5 relevant to an adverse credibility finding either because they contradict a
6 claimant’s testimony or demonstrate abilities and skills that can easily transfer to a
7 workplace setting).

8 Second, the ALJ found that Plaintiff’s statements concerning the severity of
9 his symptoms and limitations were inconsistent with his “less than full
10 compliance” with prescribed and recommended treatment. Tr. 29. The ALJ noted
11 the following:

12 [T]he longitudinal medical record shows times of inconsistent use of
13 prescribed medications for diabetes and hypertension; lack of
14 adherence to dietary recommendations; and lack of regular exercise. .
15 . In addition, the record indicates that the claimant has the knowledge,
16 ability, and skills to follow recommended treatment The
17 longitudinal record suggests significantly improved diabetes
18 management and control of blood glucose levels with treatment
19 compliance.

17 Tr. 29. These inconsistencies between Plaintiff’s alleged limitations and his lack
18 of compliance with treatment, with which he has the ability to comply, provided a
19 permissible and legitimate reason for discounting Plaintiff’s credibility.
20 *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008) (finding that a

1 plaintiff's "unexplained or inadequately explained failure to seek treatment or to
2 follow a prescribed course of treatment" provided legitimate reason for rejecting
3 claimant's credibility).

4 Finally, the ALJ found that Plaintiff's statements concerning the severity of
5 his symptoms and limitations were inconsistent with the objective medical
6 evidence. Tr. 28. For example, although Plaintiff reported ongoing complications
7 in other body systems from diabetes, the record did not show continued lower
8 extremity problems or significant gait abnormalities; rather, Plaintiff could
9 "tandem walk, toe and heel walk, hop, and squat for a short while." Tr. 29, 322.
10 Plaintiff complained that his high blood pressure and tachycardia contribute to his
11 inability to work, but the record shows consistent use of prescribed medications
12 would manage both conditions. Tr. 29, 324, 415-16, 418-20. Finally, although
13 Plaintiff complained of low back pain, the record does not show ongoing reports of
14 back symptoms or ongoing treatment for back pain; rather, examinations showed
15 Plaintiff has normal back range of motion. Tr. 29, 323, 646. These inconsistencies
16 between Plaintiff's alleged limitations and objective medical evidence provided a
17 permissible and legitimate reason for discounting Plaintiff's credibility. *Thomas*,
18 278 F.3d at 958.

19 Accordingly, this Court concludes that the ALJ did not err in discrediting
20 Plaintiff's credibility.

1 **B. Medical Providers**

2 There are three types of physicians: “(1) those who treat the claimant
3 (treating physicians); (2) those who examine but do not treat the claimant
4 (examining physicians); and (3) those who neither examine nor treat the claimant
5 [but who review the claimant’s file] (nonexamining [or reviewing] physicians).”
6 *Holohan*, 246 F.3d at 1201-02 (citations omitted). Generally, a treating
7 physician’s opinion carries more weight than an examining physician’s, and an
8 examining physician’s opinion carries more weight than a reviewing physician’s.
9 *Id.* In addition, the regulations give more weight to opinions that are explained
10 than to those that are not, and to the opinions of specialists concerning matters
11 relating to their specialty over that of nonspecialists. *Id.* (citations omitted). A
12 physician’s opinion may be entitled to little if any weight, when it is an opinion on
13 a matter not related to her or his area of specialization. *Id.* at 1203, n.2 (citation
14 omitted).

15 A treating physician’s opinions are entitled to substantial weight in social
16 security proceedings. *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228
17 (9th Cir.2009). If a treating or examining physician’s opinion is uncontradicted, an
18 ALJ may reject it only by offering “clear and convincing reasons that are supported
19 by substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir.
20 2005). “However, the ALJ need not accept the opinion of any physician, including

1 a treating physician, if that opinion is brief, conclusory and inadequately supported
2 by clinical findings.” *Bray*, 554 F.3d at 1228 (quotation and citation omitted). “If
3 a treating or examining doctor’s opinion is contradicted by another doctor’s
4 opinion, an ALJ may only reject it by providing specific and legitimate reasons
5 that are supported by substantial evidence.” *Bayliss*, 427 F.3d at 1216 (citing
6 *Lester v. Chater*, 81 F.3d 821, 830-31 (9th Cir. 1995)). An ALJ may also reject a
7 treating physician’s opinion which is “based to a large extent on a claimant’s self-
8 reports that have been properly discounted as incredible.” *Tommasetti*, 533 F.3d at
9 1041 (internal quotation and citation omitted).

10 **1. Dr. Moon**

11 Plaintiff first contends the ALJ erred by failing to properly reject the opinion
12 of examining psychologist, Dr. Tae-Im Moon. ECF No. 14 at 10. Plaintiff points
13 to Dr. Moon’s July 12, 2012 evaluation in which he opined Plaintiff would have
14 two moderate work-related limitations: moderate difficulty learning new tasks and
15 moderate inability to “[c]omplete a normal work day and work week without
16 interruptions from psychologically based symptoms.” *Id.* at 10-11, Tr. 549.
17 According to Plaintiff, if the ALJ had properly incorporated this opinion into the
18 RFC finding, he would have determined that Plaintiff was unable to sustain
19 employment. ECF No. 14 at 13.

1 This Court finds the ALJ properly considered the medical opinion of Dr.
2 Moon and incorporated his opinion into the RFC finding. The ALJ acknowledged
3 that Plaintiff “may have some difficulty, at times, maintaining concentration for
4 complex tasks and instructions due to the combination of his mental and physical
5 impairments, treatment, and associated symptoms to the extent credited.” Tr. 32.
6 In considering these limitations, the ALJ concluded that Plaintiff would have the
7 ability to “remember, understand, and carry out instructions and tasks generally
8 associated with occupations that have an SVP of 1-2,” which conclusion was then
9 incorporated into the final RFC finding. Tr. 32. Because the ALJ incorporated Dr.
10 Moon’s opinion into the RFC finding, he did not need to provide clear and
11 convincing reasons for rejecting any of Dr. Moon’s opinions. *Turner v. Comm’r of*
12 *Soc. Sec.*, 613 F.3d 1217, 1222-23 (9th Cir. 2010). Therefore, the ALJ did not err
13 in his evaluation of Dr. Moon’s opinion.

14 **2. Mr. Anderson**

15 Plaintiff next contends the ALJ improperly rejected the opinion of Mr.
16 Russell Anderson.³ ECF No. 14 at 12-13. Plaintiff points to Mr. Anderson’s June
17 28, 2011 evaluation in which he noted marked limitations in several areas of
18 functioning. *Id.* at 12, Tr. 336. Plaintiff argues that Mr. Anderson’s opinion

19 ³ Plaintiff attributes this opinion to both Mr. Anderson and the physician, Dr.
20 Rodenberg, who signed off on Mr. Anderson’s evaluation. ECF No. 14 at 12-13.

1 should be given greater weight because, although Mr. Anderson himself is not an
2 acceptable medical source, Dr. Rodenberger “cosigned” his opinion. ECF No. 14
3 at 13-14.

4 As a licensed clinical social worker, Mr. Anderson is not an “acceptable
5 medical source” within the meaning of 20 C.F.R. § 416.913(a); SSR 06-03p, 2006
6 WL 2329939 at *2 (a licensed clinical social worker is not an “acceptable medical
7 source” under § 416.913(a)). Instead, Mr. Anderson qualifies as an “other source”
8 as defined in 20 C.F.R. § 416.913(d). *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th
9 Cir. 2012). Because Mr. Anderson is an “other source” rather than an “acceptable
10 medical source,” his opinions about the nature and severity of Plaintiff’s
11 impairments are not entitled to controlling weight. SSR 06-03p, 2006 WL
12 2329939 at *2; 20 C.F.R. § 416.927(a)(2). The ALJ need only have provided
13 “germane reasons” for rejecting Mr. Anderson’s opinions. *Molina*, 674 F.3d at
14 1111. However, to the extent the record shows Mr. Anderson “was working
15 closely with, and under the supervision of [a physician], [his] opinion is to be
16 considered that of ‘an acceptable medical source.’” *Taylor v. Comm’r of Soc. Sec.*
17 *Admin.*, 659 F.3d 1228, 1234 (9th Cir. 2011); *cf. Molina*, 674 F.3d at 1111 (finding
18 that a physician’s assistant, an “other source,” did not otherwise qualify as a
19 medically acceptable source because the record did not show she worked under a
20 physician’s close supervision).

1 As a preliminary matter, this Court finds insufficient support in the record to
2 find that Mr. Anderson “was working closely with, and under the supervision of”
3 Dr. Rodenberger. Dr. Rodenberger merely signed the “Releasing Authority
4 Signature” block at the end of Mr. Anderson’s evaluation form. Tr. 338.
5 Therefore, this Court treats Mr. Anderson’s opinion as that of an “other source.”

6 The ALJ provided germane reasons for rejecting Mr. Anderson’s opinion.
7 First, the ALJ noted that Mr. Anderson’s opinion was partly based on claimant’s
8 subjective reports of symptoms. Tr. 31. As explained above, the ALJ determined
9 Plaintiff’s subjective complaints were not credible. Because the ALJ need not
10 accept a medical opinion based on a plaintiff’s non-credible self-reporting,
11 *Tomasetti*, 533 F.3d at 1041, the ALJ properly rejected this evaluation.

12 Second, the ALJ noted that Mr. Anderson’s opinion was inconsistent with
13 evaluating medical sources, specifically Dr. Jay Toews. Tr. 31, 314-18. Because
14 Dr. Toew’s opinion was based on a comprehensive psychological evaluation and
15 was generally consistent with other examining sources and the longitudinal record,
16 the ALJ afforded Dr. Toew’s opinion greater weight than Mr. Anderson’s. Tr. 31.
17 Because the ALJ can properly reject an “other source” opinion on the ground that
18 it conflicts with that of an “acceptable medical source,” *see Molina*, 674 F.3d at
19 1111, the ALJ had further grounds for only affording Mr. Anderson’s opinion
20 “some weight.”

1 **C. Hypothetical Question Posed to Vocational Expert**

2 “Hypothetical questions posed to the vocational expert must set out *all* the
3 limitations and restrictions of the particular claimant....” *Embrey v. Bowen*, 849
4 F.2d 418, 422 (9th Cir. 1988). “Unless the record indicates that the ALJ had
5 specific and legitimate reasons for disbelieving a claimant's testimony as to
6 subjective limitations such as pain, those limitations must be included in the
7 hypothetical in order for the vocational expert's testimony to have any evidentiary
8 value.” *Embrey*, 849 F.2d at 423. “If the assumptions in the hypothetical are not
9 supported by the record, the opinion of the vocational expert that claimant has a
10 residual working capacity has no evidentiary value.” *Gallant v. Heckler*, 753 F.2d
11 1450, 1456 (9th Cir. 1984).

12 Plaintiff contends the hypothetical question the ALJ posed to the vocational
13 expert did not adequately express the full extent of Plaintiff’s limitations,
14 specifically because it did not incorporate the opinions of Dr. Moon and Dr.
15 Rodenberger. ECF No. 14 at 13-14. This argument is derivative of Plaintiffs’
16 arguments concerning the ALJ’s rejection of Plaintiff’s credibility and the medical
17 providers’ opinions. Given that the ALJ properly rejected this evidence, no error
18 has been shown.

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1 **IT IS HEREBY ORDERED:**

2 1. Plaintiff's Motion for Summary Judgment (ECF No. 14) is **DENIED**.

3 2. Defendant's Motion for Summary Judgment (ECF No. 16) is

4 **GRANTED.**

5 The District Court Executive is hereby directed to enter this Order, enter
6 **JUDGMENT** for **DEFENDANT**, provide copies to counsel, and **CLOSE** the file.

7 **DATED** September 25, 2014.



9 *Thomas O. Rice*
THOMAS O. RICE
United States District Judge

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