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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON
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9 JESSICA-REA HANSEN-STEEL, AKA
10 CONNOR BRYAN SWAN¹

11 Plaintiff,

12 v.

13 CAROLYN W. COLVIN, Commissioner
14 of Social Security Administration,
15 Defendant.
16

NO. 2:13-cv-03104-SAB

**ORDER DENYING
PLAINTIFF'S MOTON FOR
SUMMARY JUDGMENT;
GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

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18 Before the Court are Plaintiff's Motion for Summary Judgment, ECF No.
19 26, and Defendant's Motion for Summary Judgment, ECF No. 29. The motions
20 were heard without oral argument. Plaintiff is represented by D. James Tree.
21 Defendant is represented by Assistant United States Attorney Pamela De Rusha
22 and Special Assistant United States Attorney John C. LaMont.
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24 ¹ On December 8, 2011, Plaintiff changed his name to Connor Bryan Swan. The
25 Court will use masculine pronouns when referring to Plaintiff in this decision.
26 Plaintiff has also used other aliases in the past, including Rea J. Steel, Rea J.
27 Fleming, Jessica Hansen, Jr., Jessica Steel, R. Jessica Sorensenon, Rea J. Thorton,
28 and Jessica Wangler.

**ORDER DENYING PLAINTIFF'S MOTON FOR SUMMARY
JUDGMENT; GRANTING DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT ~ 1**

1 **I. Jurisdiction**

2 On December 15, 1997, Plaintiff filed applications for disability insurance
3 benefits (DIB) and supplemental security income payments (SSI). Plaintiff alleged
4 he is disabled beginning June 1, 1997, due to conditions including bipolar
5 disorder, multiple personality disorder, wrist, knee and back pain, scoliosis, and
6 attention deficit disorder.

7 On August 14, 1999, Administrative Law Judge (ALJ) Edward Nichols
8 issued a decision, finding Plaintiff was not disabled. Plaintiff appealed and the
9 Appeals Council remanded the decision. Pursuant to the remand order, ALJ
10 Nichols issued a decision on July 23, 2003, finding Plaintiff was not disabled.
11 Again, Plaintiff appealed the decision and again the Appeals Council remanded
12 the case.

13 On remand, ALJ R. J. Payne issued a decision on August 19, 2009, finding
14 Plaintiff was not disabled. The Appeals Council upheld the decision, and Plaintiff
15 appealed the decision to the Eastern District of Washington. While the case was
16 pending, the parties jointly stipulated that the case should be remanded for further
17 administrative proceedings. Judge Suko granted the stipulation, and the case was
18 remanded and assigned to ALJ Ilene Sloan.

19 On June 20, 2013, Plaintiff appeared at a video hearing in Yakima,
20 Washington before ALJ Sloan, who presided over the hearing from Seattle,
21 Washington. Frederick Cutler, vocational expert, also appeared at the hearing.
22 Plaintiff was represented by attorney D. James Tree. On July 18, 2013, ALJ Sloan
23 ruled that Plaintiff was not disabled. Plaintiff requested an expedited appeal.

24 Plaintiff then filed a timely appeal with the U.S. District Court for the
25 Eastern District of Washington on September 30, 2013.

26 **II. Sequential Evaluation Process**

27 The Social Security Act defines disability as the “inability to engage in any
28 substantial gainful activity by reason of any medically determinable physical or

1 mental impairment which can be expected to result in death or which has lasted or
2 can be expected to last for a continuous period of not less than twelve months.”
3 42 U.S.C. § 423(d)(1)(A). A claimant shall be determined to be under a disability
4 only if his impairments are of such severity that the claimant is not only unable to
5 do his previous work, but cannot, considering claimant’s age, education and work
6 experiences, engage in any other substantial gainful work which exists in the
7 national economy. 42 U.S.C. §423(d)(2)(A).

8 The Commissioner has established a five-step sequential evaluation process
9 for determining whether a person is disabled. 20 C.F.R. § 404.1520(a)(4); *Bowen*
10 *v. Yuckert*, 482 U.S. 137, 140-42 (1987).

11 Step 1: Is the claimant engaged in substantial gainful activities? 20 C.F.R. §
12 404.1520(b). Substantial gainful activity is work done for pay and requires
13 compensation above the statutory minimum. 20 C.F.R. § 404.1574; *Keyes v.*
14 *Sullivan*, 894 F.2d 1053, 1057 (9th Cir. 1990). If the claimant is engaged in
15 substantial activity, benefits are denied. 20 C.F.R. § 404.1571. If he is not, the ALJ
16 proceeds to step two.

17 Step 2: Does the claimant have a medically-severe impairment or
18 combination of impairments? 20 C.F.R. § 404.1520(c). If the claimant does not
19 have a severe impairment or combination of impairments, the disability claim is
20 denied. A severe impairment is one that lasted or must be expected to last for at
21 least 12 months and must be proven through objective medical evidence. 20
22 C.F.R. § 404.1508-09. If the impairment is severe, the evaluation proceeds to the
23 third step.

24 Step 3: Does the claimant’s impairment meet or equal one of the listed
25 impairments acknowledged by the Commissioner to be so severe as to preclude
26 substantial gainful activity? 20 C.F.R. § 404.1520(d); 20 C.F.R. § 404 Subpt. P.
27 App. 1. If the impairment meets or equals one of the listed impairments, the
28 claimant is conclusively presumed to be disabled. *Id.* If the impairment is not one

1 conclusively presumed to be disabling, the evaluation proceeds to the fourth step.

2 Before considering Step 4, the ALJ must first determine the claimant's
3 residual functional capacity. 20 C.F.R. § 404.1520(e). An individual's residual
4 functional capacity is his ability to do physical and mental work activities on a
5 sustained basis despite limitations from his impairments.

6 Step 4: Does the impairment prevent the claimant from performing work he
7 has performed in the past? 20 C.F.R. § 404.1520(f). If the claimant is able to
8 perform his previous work, he is not disabled. *Id.* If the claimant cannot perform
9 this work, the evaluation proceeds to the fifth and final step.

10 Step 5: Is the claimant able to perform other work in the national economy
11 in view of his age, education, and work experience? 20 C.F.R. § 404.1520(g).

12 The initial burden of proof rests upon the claimant to establish a prima facie
13 case of entitlement to disability benefits. *Tackett v. Apfel*, 108 F.3d 1094, 1098
14 (9th Cir. 1999). This burden is met once a claimant establishes that a physical or
15 mental impairment prevents him from engaging in his previous occupation. *Id.* At
16 step five, the burden shifts to the Commissioner to show that the claimant can
17 perform other substantial gainful activity. *Id.*

18 **III. Standard of Review**

19 The Commissioner's determination will be set aside only when the ALJ's
20 findings are based on legal error or are not supported by substantial evidence in
21 the record as a whole. *Matney v. Sullivan*, 981 F.2d 1016, 1018 (9th Cir. 1992)
22 (citing 42 U.S.C. § 405(g)). Substantial evidence is "more than a mere scintilla,"
23 *Richardson v. Perales*, 402 U.S. 389, 401 (1971), but "less than a preponderance."
24 *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n. 10 (9th Cir. 1975). Substantial
25 evidence is "such relevant evidence as a reasonable mind might accept as adequate
26 to support a conclusion." *Richardson*, 402 U.S. at 401. The Court must uphold the
27 ALJ's denial of benefits if the evidence is susceptible to more than one rational
28 interpretation, one of which supports the decision of the administrative law judge.

1 *Batson v. Barnhart*, 359 F.3d 1190, 1193 (9th Cir. 2004). “If the evidence can
2 support either outcome, the court may not substitute its judgment for that of the
3 ALJ.” *Matney*, 981 F.2d at 1019.

4 A decision supported by substantial evidence will be set aside if the proper
5 legal standards were not applied in weighing the evidence and making the
6 decision. *Browner v. Secretary of Health & Human Servs.*, 839 F.2d 432, 433 (9th
7 Cir. 1988). An ALJ is allowed “inconsequential” errors as long as they are
8 immaterial to the ultimate nondisability determination.” *Stout v. Comm’r, Soc. Sec.*
9 *Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006).

10 **IV. Statement of Facts**

11 The facts have been presented in the administrative transcript and the ALJ’s
12 decision and will only be summarized here.

13 Plaintiff was twenty-three at the time he initially filed his application for
14 disability benefits. At the time of the hearing in June, 2013, Plaintiff was thirty-
15 nine. Prior to 1997, Plaintiff worked as a security guard for a number of years, in a
16 number of different positions. He has one biological child who, during the period
17 in question, was being raised by the child’s grandmother. Also, during this same
18 time, he was helping raise his partner’s child. At various times during this period,
19 Plaintiff was homeless and living in a shelter. He enjoys building models and
20 playing on the computer.

21 Plaintiff grew up in a military family and reports experiencing physical and
22 sexual abuse by his stepfather. He earned his GED. Between 1999 and 2002,
23 Plaintiff attended classes at Yakima Valley Community College. While at YVCC,
24 Plaintiff worked as a tutor at the YVCC tutor center from January, 2000 to Fall,
25 2002. Plaintiff reports he is computer literate.

26 Plaintiff maintains he cannot work because he is unable to hold a job as he
27 usually gets fired, he gets pissed off at work, he has a short attention span, he has
28 bad knees and a bad back, and he has difficulty standing for any length of time. At

1 the 2003 hearing, he explained that his jobs typically ended because he would get
2 into a fight with a co-worker, tell his boss off, or he didn't feel like going to work
3 so he would not go. (Tr. 499.)

4 **V. The ALJ's findings**

5 The ALJ's decision addresses the closed period from June 1, 1997 to June 1,
6 2004. The ALJ found Plaintiff met the insured status requirement of the Social
7 Security Act for the time period in question.

8 At step one, the ALJ found Plaintiff has not engaged in substantial gainful
9 activity from June 1, 1997 to June 1, 2004, the requested closed period. (Tr. 577.)

10 At step two, the ALJ found Plaintiff has the following severe impairments:
11 scoliosis, obesity, bipolar disorder, and personality disorder. (Tr. 577.)

12 At step three, the ALJ found that Plaintiff's impairments or combination of
13 impairments do not meet or medically equal Listing 1.04 or Listing 12.00. (Tr.
14 579-80.)

15 The ALJ concluded that Plaintiff has the residual functional capacity to
16 perform medium work as defined in 20 C.F.R. § 416.967(a)² except occasionally
17 climb ladders, ropes, scaffolds, stairs, and ramps, and occasionally balance, stoop,
18 kneel, crouch, and crawl. (Tr. 580-81.) Plaintiff can understand, remember, and
19 carry out simple as well as detailed tasks, but can not have any contact with the
20 general public.

21 At step four, the ALJ found Plaintiff was capable of performing his past
22 relevant work as a security guard. (Tr. 591.)

23 In the alternative, at step five, the ALJ found there were jobs that exist in
24 significant numbers in the national economy that Plaintiff can perform. (Tr. 592.)

25 _____
26 ² (c) Medium work. Medium work involves lifting no more than 50 pounds at a
27 time with frequent lifting or carrying of objects weighing up to 25 pounds.

28 20 C.F.R. § 404.1567(c).

1 The ALJ relied on the testimony of a vocation expert, and concluded that Plaintiff
2 was capable of performing the requirements of representative occupations such as
3 cleaner, housekeeping cleaner, and assembler. As such, the ALJ concluded that
4 Plaintiff was not disabled for the requested closed period of June 1, 1997 to June
5 1, 2004.

6 **VI. Issues for Review**

7 1. Did substantial evidence support the ALJ's adverse credibility
8 finding?

9 2. Did the ALJ reasonably resolve the conflicting medical evidence and
10 reach conclusions supported by substantial evidence?

11 3. Did Plaintiff receive due process of law?

12 **VII. Discussion**

13 **1. Plaintiff's Credibility**

14 In making her ruling, the ALJ found that Plaintiff's statements concerning
15 his limitations were not credible. Specifically, the ALJ noted that Plaintiff alleged
16 that his mental conditions prevent him from holding a job for longer than a few
17 months. He states he is easily angered, and cannot be around other people. He
18 reports that he occasionally disassociates for two or three days and does not know
19 where he is or what he is doing. He describes himself as argumentative. He will
20 get depressed and isolate himself in his room for three to five days at a time. He
21 states he has a short attention span, and describes periods of depression and bouts
22 of mania. He indicates he has suicidal ideation and a history of suicide attempts.

23 The ALJ concluded that Plaintiff's statements concerning the intensity,
24 persistence and limiting effects of his symptoms are not entirely credible. She
25 cited the following reasons: (1) the medical records do not substantiate Plaintiff's
26 back complaints; (2) medical imaging does not support Plaintiff's back
27 complaints; (3) Plaintiff's obesity is slight, and apparently has not caused any
28 secondary complications, such as heart disease or diabetes; (4) there is evidence of

1 drug-seeking behavior; (5) state agency psychological consultants question the
2 diagnosis of bipolar; (6) Plaintiff received relatively minimal mental health
3 treatment for his allegedly severe depression and mood instability; (7) medical
4 records indicate that Plaintiff's mental symptoms did respond well to treatment;
5 (8) Plaintiff has been able to sustain fairly long-term relationships with a few
6 people; (9) he was able to attend Yakima Valley Community College for three
7 years; (10) he was able to tutor other students who needed help with math and
8 English from 2000 – 2002; (11) Plaintiff's performance on mental status testing
9 showed that he retained fairly intact cognitive functioning; (12) lack of mention in
10 the reports of any ongoing suicidal ideation or suicide attempts; (13) inconsistent
11 statements in the record about his psychotic symptoms (multiple personalities,
12 hallucinations, paranoid ideation); (14) inconsistent statements about his
13 intellectual functioning; (15) inconsistent statements about his substance use; (16)
14 inconsistent statements about his medical history; (17) inconsistent statements
15 about his educational history; (18) evidence that Plaintiff has disability conviction,
16 i.e. that he has disability seeking motivation; and (19) Dr. Toews suspected a high
17 probability of malingering and evidence of lack of motivation and cooperation.
18 (Tr. 581-585).

19 An ALJ's assessment of a claimant's credibility is entitled to "great weight."
20 *Anderson v. Sullivan*, 914 F.2d 1121, 1124 (9th Cir.1990). When there is no
21 evidence of malingering, the ALJ must give "specific, clear and convincing
22 reasons" for rejecting a claimant's subjective symptom testimony. *Molina v.*
23 *Astrue*, 674 F.3d 1104, 1112 (9th Cir. 2012) (citation omitted). If the ALJ's
24 credibility finding is supported by substantial evidence in the record, the
25 reviewing court "may not engage in second-guessing." *Thomas v. Barnhart*, 278
26 F.3d 947, 959 (9th Cir. 2002). In recognition of the fact that an individual's
27 symptoms can sometimes suggest a greater level of severity of impairment than
28 can be shown by the objective medical evidence alone, 20 CFR 404.1529(c) and

1 416.929(c) describe the kinds of evidence, including the factors below, that the
2 ALJ must consider in addition to the objective medical evidence when assessing
3 the credibility of an individual's statements:

- 4 1. The individual's daily activities; 2. The location, duration,
5 frequency, and intensity of the individual's pain or other symptoms;
- 6 3. Factors that precipitate and aggravate the symptoms; 4. The type,
7 dosage, effectiveness, and side effects of any medication the
8 individual takes or has taken to alleviate pain or other symptoms;
- 9 5. Treatment, other than medication, the individual receives or has
10 received for relief of pain or other symptoms; 6. Any measures other
11 than treatment the individual uses or has used to relieve pain or other
12 symptoms (*e.g.*, lying flat on his or her back, standing for 15 to 20
13 minutes every hour, or sleeping on a board); and 7. Any other factors
14 concerning the individual's functional limitations and restrictions due
15 to pain or other symptoms.

16 SSR 96-7P, 1996 WL 374186.

17 Here, the ALJ's credibility determination is clearly supported by the record.
18 The ALJ carefully reviewed the entire record, noted where the medical records
19 failed to support Plaintiff's alleged limitations, and noted where Plaintiff made
20 numerous inconsistent statements regarding his perceived limitations. The ALJ's
21 credibility determination is significant because certain medical providers provided
22 opinions based on Plaintiff's self-reported diagnoses and descriptions of his
23 symptoms, rather than conduct testing. The ALJ relied heavily on the fact that
24 Plaintiff was able to successfully attend community college between 1999 and
25 2002 and successfully tutor other students. This was not in error. Notably, Plaintiff
26 did not seek any mental health treatment during this time, and there were no
27 mental health evaluations conducted during this time period, suggesting that
28 Plaintiff's mental health was fairly stable.

29 **2. Medical Opinions**

30 The ALJ is tasked with resolving conflicts in the medical evidence. *Andrews*
31 *v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). Generally speaking, three types of
32

1 doctors provide medical evidence: treating doctors, examining doctors, and
2 reviewing (non-examining) doctors. “By rule the Social Security Administration
3 favors the opinion of a treating physician over non-treating physicians.” 20 C.F.R.
4 § 416.927³; *Orn v. Astrue*, 495 F.3d 625, 631 (9th Cir. 2007). “If a treating
5 physician’s opinion is well-supported by medically acceptable clinical and
6 laboratory diagnostic techniques and is not inconsistent with the other substantial
7 evidence in the case record, it will be given controlling weight.” *Orn*, 495 F.3d at
8 631. If a treating physician’s opinion is not given “controlling weight” because it
9 does not meet these requirements, the ALJ should consider (i) the length of the
10 treatment relationship and the frequency of examination by the treating physician;
11 and (ii) the nature and extent of the treatment relationship between the patient and
12 the treating physician in determining the weight it will be given. *Id.* The ALJ is
13 not required, however, to merely accept the opinion of a treating doctor. *Lester v.*
14 *Chater*, 81 F.3d 821, 830 (9th Cir. 1995). Where contradicted, the ALJ may reject
15 the opinion for specific and legitimate reasons that are supported by substantial
16 evidence in the record. *Id.* On the other hand, where the treating doctor’s opinion
17 is uncontradicted, the ALJ can only reject it for clear and convincing reasons. *Id.*

18 The opinions of examining physicians are afforded more weight than those
19 of non-examining physicians. *Id.* Factors the ALJ should consider in evaluating
20 any medical opinion (not limited to the opinion of the treating physician) include:
21 _____

22 ³ 20 C.F.R. § 416.927(c)(2) states: Generally, we give more weight to opinions
23 from your treating sources, since these sources are likely to be the medical
24 professionals most able to provide a detailed, longitudinal picture of your medical
25 impairment(s) and may bring a unique perspective to the medical evidence that
26 cannot be obtained from the objective medical findings alone or from reports of
27 individual examinations, such as consultative examinations or brief
28 hospitalizations.

(1) the amount of relevant evidence that supports the opinion and the quality of the explanation provided; (2) the consistency of the medical opinion with the record as a whole; (3) the specialty of the physician providing the opinion; and (4) other factors, such as the degree of understanding a physician has of the Administration’s disability programs and their evidentiary requirements and the degree of his or her familiarity with other information in the case record. *Orn*, 495 F.3d at 631. When evaluating conflicting medical opinions, an ALJ need not accept the opinion of a doctor if that opinion is brief, conclusory, and inadequately supported by clinical findings. *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).

Below is a chart that lists the medical testimony considered by the ALJ and the weight given each opinion:

Provider	Position	Summary of Opinion	Weight
Physical Limitations			
Dr. Kurtz 1/1998 (Tr. 105-109)	Examining physician	Diagnosed scoliosis, right wrist pain, skin moles on back, and low back and left knee pain	
Dr. Cierebiej 2/1998 (Tr. 112-118)	State agency medical consultant	Plaintiff could perform medium work, with occasional postural restrictions	significant
Dr. Kaminski 4/1998 (Tr. 179)	Treating physician	Plaintiff did not have any significant workplace limitations due to back pain or abdominal pain	significant
Dr. Hoskins 4/1998 (Tr. 185-192)	State agency medical consultant	Plaintiff could perform medium work, with some postural and environmental restrictions	significant
K.R. Meyer 1-2/2003 (Tr. 336-350)	PA-C	Plaintiff could perform modified work due to his right hand injury	some

Provider	Position	Summary of Opinion	Weight
Dr. Francis 8/2009 (Tr. 540-545)	Medical expert	No evidence showing that Plaintiff was unemployable from a physical standpoint; recommended light work	some
Mental Limitations			
Dr. Lemere 9/1997 (Tr. 93-96) (Tr. 233-236)	Examining physician- DSHS	Plaintiff would be unable to concentrate on a job, due to his extreme mood swings. He had moderate to marked limitations in social functioning and cognitive functioning. Dr. believed Plaintiff's impairment would last for six months.	little
Dr. Jarvis 12/1997 (Tr. 97-101)	Consultative examiner	Dr. Jarvis listed a number of possible diagnoses, indicating his uncertainty. He concluded that Plaintiff appeared to have a mental disorder that creates significant limitations in his ability to tolerate the pressures and expectations of a normal work setting.	great to mental health status; little weight to GAF score
Dr. Rowlette 1/1998 (Tr. 110-111)	treating physician (but not prior to issuing opinion)	Plaintiff has bipolar disorder and PTSD; ability to perform gainful employment was doubtful due to presence of Plaintiff's symptoms	little
Dr. Reade 2/1998 (Tr. 120-132)	State agency psychological consultant	Plaintiff had limitations to persistence and sustained concentration, yet he retained ability to perform detailed tasks consistently. Plaintiff would likely not be suitable for working directly with the public.	great

Provider	Position	Summary of Opinion	Weight
Dr. Haney 5/1998 (Tr. 193-202)	State agency psychological consultant	Plaintiff could understand, remember, and maintain his concentration to carry out detailed instructions; Plaintiff's affective instability would interfere with his ability to persist through a normal workweek, but he could persist consistently the greater part of the time.	some
Dr. Czysz 8/1998 (Tr. 229-232)	State agency psychological consultant	Plaintiff's ability to attend and concentrate appeared impaired. He had moderate to marked limitations in cognitive and social functioning. His ability to attend/concentrate appeared impaired during the session.	little
Dr. Kiele 9/1998 (Tr. 248-250)	Treating physician	GAF-45. Noted that patient early on in the interview addressed issue of perceived inability to hold a job.	little weight to GAF
Dr. Moore 8/2009 (Tr. 443-460)	Psychological expert at August 2009 hearing	There was insufficient evidence of ADHD, bipolar disorder, and PTSD, but record supported personality disorder; no limitations in daily activity; moderate limitation in social functioning; mild limitation in concentration, persistence, or pace.	some
Dr. Toews 1/2013 (Tr. 311-318)	Consultative Examiner	With the exception of his ability to deal with the public Plaintiff had good ability to make occupational adjustments in various categories.	great

Plaintiff contends the ALJ erred in rejecting the following providers: (1) Dr. Lemere; (2) Dr. Jarvis; (3) Dr. Rowlett; (4) Dr. Czysz; (5) Dr. Kiele; and

1 (6) Dr. Kurtz. As set forth above, there is significant conflict among the medical
2 opinions in the record. The ALJ did not err in resolving these conflicts. The ALJ
3 gave less weight to the psychological evaluation forms completed by Dr. Lemere
4 and Dr. Czynsz because there were no clinical findings or testing to support their
5 conclusions, except for Plaintiff's self-reported symptoms and diagnoses. This was
6 not in error. Dr. Lemere and Dr. Czynsz did not perform any mental status
7 examinations. Rather, their conclusions relied primarily on Plaintiff's self-reported
8 symptoms and limitations, which, as set forth above, the ALJ properly found to
9 not be credible.

10 Additionally, the ALJ gave specific and legitimate reasons for crediting the
11 various medical opinions that are supported by substantial evidence. The ALJ
12 noted that despite the mental conditions, Plaintiff was able to attend college for
13 three years between 1999 and 2002, after the dates the medical opinions were
14 given that concluded that Plaintiff would have difficulty sustaining. The ALJ
15 considered that Plaintiff successfully worked as a tutor during this time, which
16 seemingly contradicts the earlier medical opinions. Also, the residual functional
17 capacity limitations incorporated Plaintiff's recognized cognitive and social
18 limitations in that it provided that Plaintiff could not have any contact with the
19 general public.

20 **3. Due Process**

21 Plaintiff argues that he did not receive a full and fair hearing because the
22 ALJ prevented his attorney from asking the Vocational Expert several questions.

23 5 U.S.C. § 556(c) provides, in part, that the presiding officer at
24 administrative hearings may regulate the course of the hearing. A claimant in a
25 disability hearing is entitled to "such cross-examination as may be required for a
26 full and true disclosure of the facts." 5 U.S.C. § 556(d). The ALJ is afforded
27 discretion to decide when cross-examination is warranted. *Solis v. Schweiker*,
28 719 F.2d 301, 302 (9th Cir. 1983).

1 Here, the questions the ALJ barred were irrelevant, immaterial or repetitious
2 of the evidence already in the record. Also, the ALJ appropriately barred
3 Plaintiff's tautological question, which essentially asked whether a disabled
4 person can work.

5 Even if the ALJ erred, Plaintiff has not shown that he was prejudiced. *See*
6 *Shinseki v. Sanders*, 556 U.S. 396, 406 (2009) (establishing that administrative
7 adjudications are subject to the same harmless error rule as generally applies to
8 civil cases); *Ludwig v. Astrue*, 681 F.3d 1047, 1054 (9th Cir. 2012) (noting that
9 reversal on account of error is not automatic, but requires a determination of
10 prejudice). The burden is on the party claiming error to demonstrate not only error,
11 but that the error affected both his procedural rights and substantial rights. *Id.*

12 Here, in considering the record as a whole, and the ALJ's explanation of her
13 decision, the Court finds that Plaintiff has not demonstrated that the decision
14 would have been any different if the ALJ would have permitted his counsel to ask
15 the vocational expert his questions.

16 **VIII. Conclusion**

17 Plaintiff has not met his burden of showing that the ALJ committed clear
18 error, or that her decision is not supported by substantial evidence.

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

20 1. Plaintiff's Motion for Summary Judgment, ECF No. 26, is **DENIED**.

21 2. Defendant's Motion for Summary Judgment, ECF No. 29, is

22 **GRANTED.**

23 3. The decision of the Commissioner denying benefits is **affirmed**.

24 4. The District Court Executive is directed to enter judgment in favor of
25 Defendant and against Plaintiff.

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**ORDER DENYING PLAINTIFF'S MOTON FOR SUMMARY
JUDGMENT; GRANTING DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT ~ 15**

1 **IT IS SO ORDERED.** The District Court Executive is hereby directed to
2 file this Order, provide copies to counsel, and close the file.

3 **DATED** this 6th day of October, 2014.



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A handwritten signature in blue ink that reads "Stanley A. Bastian". The signature is written in a cursive style and is positioned above a horizontal line.

9 Stanley A. Bastian
10 United States District Judge