

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF WASHINGTON

3
4
5 ANTHONY WAYNE SCHELIN,
6 Plaintiff,

7 v.

8
9 CAROLYN W. COLVIN,
10 Acting Commissioner of Social
11 Security,

11 Defendant.

No. CV-14-79-FVS

ORDER GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

12
13 **THIS MATTER** comes before the Court based upon cross motions for
14 summary judgment. Plaintiff Anthony W. Schelin is represented by
15 Dana C. Madsen. Defendant Carolyn W. Colvin is represented by Franco
16 L. Becia.

17 **JURISDICTION**

18 On July 11, 2012, Anthony W. Schelin applied for Supplemental
19 Security Income ("SSI") pursuant to Title XVI of the Social Security
20 Act, 42 U.S.C. §§ 1381-1383f. The Social Security Administration
21 ("SSA") denied both his initial application and his request for
22 reconsideration. Mr. Schelin asked for a hearing. An Administrative
23 Law Judge ("ALJ") held one on March 21, 2013. Mr. Schelin
24 represented himself. On April 15, 2013, the ALJ issued an
25 unfavorable decision. Mr. Schelin asked the Appeals Council to
26 review the ALJ's decision, but the Appeals Council declined to do so.

1 At that point, the ALJ's decision became the final decision of the
2 Commissioner. 20 C.F.R. § 416.1481. Mr. Schelin commenced this
3 action. 42 U.S.C. § 405(g). Both he and the Commissioner move for
4 summary judgment.

5 **BACKGROUND**

6 Anthony W. Schelin was born on February 13, 1973. (Tr. 39.¹)
7 His father played no part in his life. (Tr. 267.) He lived with his
8 mother, who was an alcoholic. (Tr. 48, 267.) She abused him
9 emotionally, physically, and sexually; expelling him from their home
10 when he was about 13 years old. *Id.* From then on, he was forced to
11 fend for himself. He began committing serious crimes, including the
12 sexual abuse of a young child. (Tr. 49.) His life was painful. On
13 more than one occasion, he attempted to commit suicide. (Tr. 41, 49-
14 50.) Little changed when he reached adulthood. He continued to
15 commit serious crimes, which resulted in repeated periods of
16 imprisonment. (Tr. at 40, 49-51.) Most recently, he was sentenced
17 to prison for possession of a stolen vehicle. (Tr. 40.) While in
18 prison, he again attempted to commit suicide. (Tr. 41.) As a
19 consequence, he served most of his sentence in the prison's mental
20 health unit. (Tr. 41, 267.) From time to time, he was evaluated by
21 psychiatrists, who prescribed a variety of medications. (Tr. 42.)

22
23 ¹The abbreviation "Tr" frequently stands for the word
24 "transcript," as in the written record of a hearing. In the
25 Eastern District of Washington, the abbreviation "Tr" has a more
26 expansive meaning. It refers to the entire administrative
record, not just to the transcript of the hearing that was
conducted by the ALJ.

1 In Mr. Schelin's opinion, the medications did little to combat his
2 depression and anxiety. *Id.* He was released from prison during the
3 summer of 2011. Between then and the summer of 2012, he was
4 evaluated by mental health professionals on a number of occasions.
5 As explained above, Mr. Schelin applied for Title XVI SSI benefits
6 on July 11, 2012. He alleges he has been disabled since July 1,
7 2006. An ALJ held a hearing on March 21, 2013, and the ALJ issued an
8 unfavorable decision on March 28, 2013.

9 **ALJ'S DECISION**

10 A person is disabled "if he is unable 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. § 1382c(a)(3)(A).
15 The SSA has established a five-step process for evaluating disability
16 claims such as Mr. Schelin's. 20 C.F.R. § 416.920. The ALJ followed
17 the specified process in arriving at an unfavorable decision.

18 A. Step One

19 A person who is engaged in substantial gainful activity is not
20 eligible for SSI benefits. 20 C.F.R. § 416.920(a)(4)(i). Thus, at
21 step one, Mr. Schelin had to show he had not engaged in "substantial
22 gainful activity" since the date upon which he applied for SSI
23 benefits. *Id.* "Substantial gainful activity means work that . . .
24 (a) [i]nvolves doing significant and productive physical or mental
25 duties; and (b) [i]s done (or intended) for pay or profit." 20
26 C.F.R. § 416.910. Mr. Schelin carried his burden. (Tr. 25.) As a

1 result, the ALJ proceeded to Step Two.

2 B. Step Two

3 At step two, the ALJ assessed the "medical severity" of Mr.
4 Schelin's impairments. Mr. Schelin had to show he has "a severe
5 medically determinable physical or mental impairment that meets the
6 duration requirement in § 416.909, or a combination of impairments
7 that is severe and meets the duration requirement[.]" 20 C.F.R. §
8 416.920(a)(4)(ii). An impairment is "severe" if it "significantly
9 limits" the claimant's "physical or mental ability to do basic work
10 activities." 20 C.F.R. § 416.920(c). Absent a severe medically
11 determinable impairment (or combination of impairments), the ALJ
12 would have rejected Mr. Schelin's claim at step two. As it turned
13 out, the ALJ determined Mr. Schelin has three severe impairments,
14 viz., "personality disorder, depression and posttraumatic stress
15 disorder." (Tr. 25.) Having determined Mr. Schelin is severely
16 impaired, the ALJ proceeded to step three.

17 C. Step Three

18 At step three, the ALJ considered whether Mr. Schelin's
19 impairments are so severe he is conclusively presumed to be disabled.
20 See *Reddick v. Chater*, 157 F.3d 715, 721 (9th Cir.1998). Resolution
21 of the issue turns upon whether Mr. Schelin has any impairment, or
22 combination of impairments, that equals an impairment that is listed
23 in 20 C.F.R. Part 404, Subpart P, Appendix 1. 20 C.F.R. §§
24 416.920(a)(iii), 416.925(a). See *Batson v. Comm'r of Soc. Sec.*
25 *Admin.*, 359 F.3d 1190, 1194 (9th Cir.2004). SSA regulations state in
26 pertinent part:

1 The Listing of Impairments (the listings) is in appendix 1
2 of subpart P of part 404 of this chapter. For adults, it
3 describes for each of the major body systems impairments
4 that . . . [the SSA considers] to be severe enough to
5 prevent an individual from doing any gainful activity,
6 regardless of his or her age, education, or work
7 experience.

8 20 C.F.R. § 416.925(a). "When a claimant meets or equals a listing,
9 'he is presumed unable to work and is awarded benefits without a
10 determination whether he actually can perform his own prior work or
11 other work.'" *Kennedy v. Colvin*, 738 F.3d 1172, 1176 (9th Cir.2013)
12 (quoting *Sullivan v. Zebley*, 493 U.S. 521, 532, 110 S.Ct. 885, 107
13 L.Ed.2d 967 (1990)). The claimant bears the burden of proof at step
14 three. See, e.g., *Molina v. Astrue*, 674 F.3d 1104, 1110 (9th
15 Cir.2012). In this instance, the ALJ decided Mr. Schelin had not
16 demonstrated he has either an impairment, or a combination of
17 impairments, that equals an impairment that is listed in 20 C.F.R.
18 Part 404, Subpart P, Appendix 1. Consequently, the ALJ concluded he
19 had failed to establish a conclusive presumption of disability.

20 D. Step Four

21 At step four, the ALJ evaluated whether Mr. Schelin can perform
22 his "past relevant work" given his "residual functional capacity."
23 20 C.F.R. § 416.920(a)(4)(iv). The SSA defines "past relevant work"
24 as work that "was done within the last 15 years, lasted long enough
25 for you to learn to do it, and was substantial gainful activity." 20
26 C.F.R. § 416.965(a). Mr. Schelin's residual functional capacity
("RFC") is the most he can do in a work setting despite his physical
and mental limitations. 20 C.F.R. § 416.945(a)(1). In assessing Mr.

1 Schelin's RFC, the ALJ had to consider "all of the relevant medical
2 and other evidence." 20 C.F.R. § 416.945(a)(3). The ALJ found Mr.
3 Schelin's "medically determinable impairments could reasonably be
4 expected to cause some of the alleged symptoms[.]" (Tr. 28.) Given
5 that finding, the ALJ proceeded to "evaluate the intensity and
6 persistence of [Mr. Schelin's] symptoms so . . . [he could] determine
7 how [Mr. Schelin's] symptoms limit [his] capacity for work[.] 20
8 C.F.R. § 416.929(c)(1). This necessitated a careful review of the
9 record. Among other things, the ALJ considered both Mr. Schelin's
10 statements and the opinions of John Arnold, Ph.D., an examining
11 psychologist. The ALJ determined Mr. Schelin's statements concerning
12 his restrictions are "not entirely credible," and he assigned only
13 "some weight" to Dr. Arnold's psychological assessments. After
14 reviewing the record, the ALJ decided Mr. Schelin does not suffer
15 from any exertional limitations, but he does suffer from
16 nonexertional limitations:

17 Exertional limitations affect an individual's ability to
18 meet the seven strength demands of the job: sitting,
19 standing, walking, lifting, carrying, pushing and pulling.
20 Nonexertional limitations or restrictions affect an
21 individual's ability to meet the other demands of jobs, and
22 include mental limitations, pain limitations, and all
23 physical limitations that are not included in the seven
24 strength demands.

25 Social Security Regulation ("SSR") 96-4p, 1996 WL 374187, at *2 (SSA
26 July 2, 1996). More specifically, the ALJ found:

"[T]he claimant has the residual functional capacity to
perform a full range of work at all exertional levels but

1 with the following nonexertional limitations: The claimant
2 should deal with things and not people. The claimant
3 should not have contact with the public and should have
4 limited contact with coworkers. The claimant is limited to
one[-] to two-step, simple tasks.

5 (Tr. 27.) This is Mr. Schelin's RFC. Having determined the RFC, the
6 ALJ turned to his "past relevant work." 20 C.F.R. § 416.965(a). He
7 found Mr. Schelin is unable to perform his past relevant work given
8 his RFC. (Tr. 30.) Thus, the ALJ moved to step five.

9 E. Step Five

10 At step five, the burden shifts to the commissioner to provide
11 "evidence that demonstrates that other work exists in significant
12 numbers in the national economy that [Mr. Schelin] can do, given
13 [his] residual functional capacity and vocational factors." 20
14 C.F.R. § 416.960(c)(2). As a general rule, there are two ways the
15 Commissioner may satisfy her burden: "(1) by the testimony of a
16 vocational expert, or (2) by reference to the Medical-Vocational
17 Guidelines at 20 C.F.R. pt. 404, subpt. P, app. 2." *Lounsbury v.*
18 *Barnhart*, 468 F.3d 1111, 1114 (9th Cir.2006). At the hearing during
19 March of 2013, the ALJ considered the testimony of a vocational
20 expert whose name is Thomas Polsin. Mr. Polsin testified Mr. Schelin
21 could work as an "industrial cleaner" (Tr. 64) or a "housekeeping
22 cleaner" (Tr. 67). Mr. Schelin took issue with Mr. Polsin's
23 testimony. He argued he has little chance of securing those types of
24 jobs because of his criminal history. (Tr. 66-67.) The ALJ credited
25 Mr. Polsin's testimony rather than Mr. Schelin's. Based upon Mr.
26 Polsin's testimony, the ALJ found that, "considering the claimant's

1 age, education, work experience, and residual functional capacity,
2 the claimant is capable of making a successful adjustment to other
3 work that exists in significant numbers in the national economy."
4 (Tr. 32.) Consequently, the ALJ concluded Mr. Schelin is not
5 disabled. *Id.*

6 **CLAIMANT'S ALLEGATIONS**

7 Mr. Schelin disagrees with the ALJ's analysis. As Mr. Schelin
8 points out, he was unrepresented at the administrative hearing. He
9 argues the ALJ did not adequately develop the record. Furthermore,
10 according to Mr. Schelin, the ALJ improperly discounted his
11 credibility, and he failed to give adequate weight to Dr. Arnold's
12 psychological assessments. In view of those alleged errors, Mr.
13 Schelin asks the Court to reverse the ALJ's unfavorable decision.

14 **STANDARD OF REVIEW**

15 A district court has "power to enter, upon the pleadings and
16 transcript of the record, a judgment affirming, modifying, or
17 reversing the decision of the Commissioner of Social Security, with
18 or without remanding the cause for a rehearing." 42 U.S.C. § 405(g).
19 However, review is limited. "The findings of the Commissioner of
20 Social Security as to any fact, if supported by substantial evidence,
21 shall be conclusive[.]" *Id.* As a result, the Commissioner's
22 decision "will be disturbed only if it is not supported by
23 substantial evidence or it is based on legal error." *Green v.*
24 *Heckler*, 803 F.2d 528, 529 (9th Cir.1986). "Substantial evidence"
25 means more than a mere scintilla, . . . but less than a
26 preponderance." *Desrosiers v. Sec'y of Health & Human Servs.*, 846

1 F.2d 573, 576 (9th Cir.1988) (internal punctuation and citations
2 omitted).

3 **ASSESSING MR. SCHELIN'S CREDIBILITY**

4 A claimant's statements about his impairments, restrictions, and
5 daily activities are evidence. 20 C.F.R. § 416.912(b)(3). By
6 themselves, however, they are not enough to establish the existence
7 of disability. 20 C.F.R. § 416.929(a). SSR 96-7p explains:

8 No symptom or combination of symptoms can be the basis for
9 a finding of disability, no matter how genuine the
10 individual's complaints may appear to be, unless there are
11 medical signs and laboratory findings demonstrating the
12 existence of a medically determinable physical or mental
13 impairment(s) that could reasonably be expected to produce
14 the symptoms.

15 1996 WL 374186, at *1 (July 2, 1996). This means a claimant has a
16 two-part burden of production: "(1) she must produce objective
17 medical evidence of an impairment or impairments; and (2) she must
18 show that the impairment or combination of impairments could
19 reasonably be expected to (not that it did in fact) produce some
20 degree of symptom." *Smolen v. Chater*, 80 F.3d 1273, 1282 (9th
21 Cir.1996) (explaining *Cotton v. Bowen*, 799 F.2d 1403, 1407-08 (9th
22 Cir.1986)).

23 Statements Concerning Mental Impairments

24 At least with respect to mental impairments, Mr. Schelin
25 fulfilled his burden of production. The ALJ found, "[C]laimant's
26 medically determinable impairments could reasonably be expected to
cause some of the alleged symptoms[.]" (Tr. 28.) That being the
case, the ALJ had to evaluate "the intensity, persistence, and

1 functionally limiting effects of the symptoms" in order to determine
2 "the extent to which the symptoms affect the individual's ability to
3 do basic work activities." SSR 96-7p, 1996 WL 374186, at *2 (July 2,
4 1996). "This requires the adjudicator to make a finding about the
5 credibility of the individual's statements about the symptom(s) and
6 its functional effects." *Id.* A credibility determination involves a
7 careful examination of the record as a whole. The ALJ must decide
8 whether the claimant's "statements can be believed and accepted as
9 true." SSR 96-7p, 1996 WL 374186, at *4. However, the ALJ's
10 discretion is subject to an important qualification. If there is no
11 evidence of malingering on the claimant's part, "the ALJ may reject
12 the claimant's testimony regarding the severity of her symptoms only
13 if he makes specific findings stating clear and convincing reasons
14 for doing so." *Smolen*, 80 F.3d at 1283. Here, the ALJ did not cite
15 any evidence of malingering. Thus, the above-described rule applies.

16 The ALJ acknowledged Mr. Schelin suffers from personality
17 disorders. While a personality disorder tends to be intractable (Tr.
18 47), some of the symptoms can be ameliorated through mental health
19 medications and counseling. Despite the fact treatment may provide
20 some relief, there were periods of time during which Mr. Schelin did
21 not take the medications that had been prescribed for him, nor did he
22 participate in counseling. The omission is significant. SSR 96-7p
23 says a claimant's "statements may be less credible if . . . the
24 medical reports or records show that the individual is not following
25 the treatment as prescribed and there are no good reasons for this
26 failure." *Id.* Consequently, the ALJ properly noted Mr. Schelin's

1 failure to participate fully in treatment. See *Fair v. Bowen*, 885
2 F.2d 597, 603 (9th Cir.1989) (in assessing credibility, an ALJ may
3 consider the claimant's unexplained, or inadequately explained,
4 "failure to follow a prescribed course of treatment").

5 Despite Mr. Schelin's inconsistent participation in treatment,
6 at least one mental status exam showed his "appearance was
7 appropriate, he was oriented, his affect was appropriate, his
8 intellect was average, he was cooperative, his thought processes were
9 logical, his thought content was unremarkable and the claimant denied
10 suicide thoughts." (Tr. 28.) (summarizing the results of an exam
11 that occurred on September 28, 2011). The ALJ thought the results of
12 the mental status exam were consistent with other evidence in the
13 record. According to the ALJ, the evidence indicated Mr. Schelin was
14 able "to perform a full range of daily activities." *Id.* Not only
15 that, but also Mr. Schelin occasionally attended social events, and
16 he was able to get around town either by taking a bus or by pedaling
17 his bicycle.

18 The ALJ's findings with respect to Mr. Schelin's daily
19 activities are supported by, for example, comments Mr. Schelin made
20 to Dr. Arnold during an evaluation that occurred on June 21, 2012.
21 Dr. Arnold recorded Mr. Schelin as saying he was:

22 Staying in a trailer with grandmother and on a couch of a
23 friend. Separated from his wife a week ago, homeless. He
24 uses the bus and rides a bike to get to appointments. He
25 is able to take care of personal hygiene. Wakes between
26 5-11 am. He will try and find work, watch TV, ride his bike
(good distraction and makes him feel good). Has problems
falling and staying asleep.

1 Mr. Schelin backed away from some of those statements when he
2 testified at the administrative hearing. While he acknowledged his
3 ability to maintain basic hygiene and to leave his home each day in
4 order to obtain at least one meal (Tr. 43), he said he had lost
5 interest in bicycling and exercising. *Id.* at 44. It was the ALJ's
6 responsibility to resolve any contradictions in the record. See
7 *Treichler v. Comm'r Soc. Sec. Admin.*, No. 12-35944, 2014 WL 7332774,
8 at * 6 (9th Cir. Dec. 24, 2014) (citing 42 U.S.C. § 405(g) and
9 *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir.1995)). Judicial
10 review of the ALJ's decision is "highly deferential." See, e.g.,
11 *Valentine v. Comm'r Soc. Sec. Admin.*, 574 F.3d 685, 690 (9th
12 Cir.2009). The ALJ decided Mr. Schelin candidly described his daily
13 routine when he met with Dr. Arnold on June 21, 2012. A claimant's
14 candid description of his daily routine provides reliable evidence
15 concerning the activities he typically performs on a daily basis.
16 Thus, Mr. Schelin's comments to Dr. Arnold provide substantial
17 evidence in support of the ALJ's determination he is able to perform
18 a full range of daily activities.

19 Not all of the skills Mr. Schelin employs during a typical day
20 are transferable to a work setting, but some are. For example, in
21 virtually every work setting, a person must be able to maintain
22 personal hygiene in order to hold a job. Mr. Schelin can do that.
23 Again, by way of example, a person must be able to get to and from
24 the work site in order to keep the job. The ALJ found Mr. Schelin is
25 able to use public transportation or his bicycle to get around the
26 city in which he lives. The fact Mr. Schelin is able to perform

1 tasks such as these tends to undermine his description of the
2 limitations he faces. *Cf. Fair*, 885 F.2d at 603 ("if a claimant is
3 able to spend a substantial part of his day engaged in pursuits
4 involving the performance of physical functions that are transferable
5 to a work setting, a specific finding as to this fact may be
6 sufficient to discredit an allegation of disabling excess pain"
7 (emphasis omitted)).

8 Finally, the ALJ considered Mr. Schelin's employment history and
9 his efforts to find a job since his 2011 release from prison. As the
10 ALJ read the record, the evidence indicates Mr. Schelin has walked
11 off jobs in the past. (Tr. 28.) This interpretation of the record
12 appears to be based upon a statement Mr. Schelin made to a mental
13 health professional at the Community Health Association of Spokane
14 ("CHAS") on September 28, 2011. Mr. Schelin said he "[h]ates being
15 called 'stupid[,]'" . . . and "[h]e has walked off jobs when called
16 this." (Tr. 267.) It is unclear which job(s) Mr. Schelin was
17 referring to. Consequently, it is difficult to determine whether the
18 ALJ's interpretation of the record is supported by the evidence. The
19 ALJ was on much firmer ground when he turned to Mr. Schelin's more
20 recent efforts to find a job. The ALJ noted his impairments did not
21 prevent him "from working/looking for work" during January of 2012.
22 This observation is supported by the record. Mr. Schelin reported
23 looking for work during the period indicated by the ALJ, although he
24 complained looking for work was very stressful. (Tr. 285.)

25 To summarize, the ALJ provided a number of clear reasons for
26 discounting Mr. Schelin's statements concerning the impact of his

1 mental impairments. Mr. Schelin has not fully engaged in treatment
2 even though it would help him cope with the symptoms of depression.
3 The results of at least one mental status exam were encouraging. He
4 is able to perform a full range of daily activities, and he is able
5 to look for work. Taken together, the reasons provided by the ALJ
6 are convincing reasons for discounting Mr. Schelin's "statements
7 concerning the intensity, persistence and limiting effects of"
8 symptoms that are associated with his mental impairments.

9 Statements Concerning Physical Pain

10 On two occasions, Mr. Schelin complained of back pain to Susan
11 Dennie, who is an Advanced Registered Nurse Practitioner ("ARNP").
12 One occasion was September 7, 2011; the other was January 25, 2012.
13 On neither occasion was Ms. Dennie able to substantiate Mr. Schelin's
14 complaints with objective findings. As a result, the ALJ discounted
15 Mr. Schelin's complaints of back pain. This was improper, says Mr.
16 Schelin. He submits depression can cause physical symptoms,
17 including "vague aches and pain." Assuming Mr. Schelin is correct,
18 the fact remains none of the health care providers or mental health
19 professionals who evaluated him suggested, much less found, a
20 connection between his depression and his complaints of pain. Thus,
21 the ALJ was justified in concluding his complaints were not supported
22 by "objective findings."

23 **WEIGHT TO BE GIVEN DR. ARNOLD'S ASSESSMENTS**

24 Dr. John Arnold is a psychologist who evaluated Mr. Schelin on
25 two occasions at the request of a state agency. The first evaluation
26 occurred during August of 2011; the second during June of 2012. On

1 both occasions, Dr. Arnold prepared a written report. Both reports
2 were fairly pessimistic. The ALJ assigned "some weight" to each one.
3 Mr. Schelin argues Dr. Arnold's reports are entitled to greater
4 weight than that.

5 The weight to which a medical or psychological evaluation is
6 entitled depends, in part, on the evaluator's relationship to the
7 claimant. "Cases in this circuit distinguish among the opinions of
8 three types of physicians: (1) those who treat the claimant
9 (treating physicians); (2) those who examine but do not treat the
10 claimant (examining physicians); and (3) those who neither examine
11 nor treat the claimant (nonexamining physicians)." *Lester v. Chater*,
12 81 F.3d 821, 830 (9th Cir.1995). "[T]he term 'physician' or 'doctor'
13 includes psychologists and other health professionals who do not have
14 M.D.'s." *Id.* at n.7. Of the three classes of physicians, the
15 testimony of a treating physician is entitled to the greatest weight.
16 This rule is "based not only on the fact that he is employed to cure
17 but also on his greater opportunity to observe and know the patient
18 as an individual.'" *Murray v. Heckler*, 722 F.2d 499, 502 (9th
19 Cir.1983) (quoting *Bowman v. Heckler*, 706 F.2d 564, 568 (5th
20 Cir.1983)). "While the opinion of a treating physician is thus
21 entitled to greater weight than that of an examining physician, the
22 opinion of an examining physician is entitled to greater weight than
23 that of a non-examining physician." *Garrison v. Colvin*, 759 F.3d
24 995, 1012 (9th Cir.2014) (citing *Ryan v. Comm'r of Soc. Sec.*, 528
25 F.3d 1194, 1198 (9th Cir.2008)). Although Dr. Arnold never treated
26 Mr. Schelin, he examined him on two occasions. In order to reject

1 the opinion of an examining psychologist, an ALJ must "give clear and
2 convincing reasons." *Regennitter v. Comm'r. of Soc. Sec. Admin.*, 166
3 F.3d 1294, 1298 (9th Cir.1999).

4 2011 Evaluation

5 Dr. Arnold concluded his 2011 report with an assessment of Mr.
6 Schelin's employability. The following remarks are representative:

7 Anthony admits to having spent the majority of his adult
8 life incarcerated. Being recently released from prison he
9 is having difficult adjusting to meeting the demands of
10 daily living. This combined with his lack of impulse
11 control and angry outburst suggests his prognosis would be
12 considered guarded. He will require intense [mental
13 health] support and intervention. Given his history and
14 current psychological symptoms it is highly unlikely he
15 would currently succeed in the employment setting. . . .
16 He experiences helplessness and hopelessness on a daily
basis. He [is] prone to becoming angry with minimal
stressors. Even minimal stress will create anger, anxiety
and a need for social isolation. . . .

17 (Tr. 308.) The ALJ did not think Dr. Arnold's pessimism was entirely
18 justified. While he agreed "[o]bjective testing shows some
19 restrictions," he rejected Dr. Arnold's findings regarding the extent
20 of the restrictions. The ALJ thought he placed too much weight upon
21 Mr. Schelin's subjective complaints, especially his "history of abuse
22 and extensive incarceration." In addition, he thought Dr. Arnold had
23 relied upon an irrelevant consideration, viz., that Mr. Schelin was
24 having trouble adjusting to life in a non-institutional setting.
25 That may have been so, the ALJ seemed to concede, but the fact
26 remained Mr. Schelin had worked in the past. According to the ALJ,

1 this circumstance suggested he would be able to do so again. The ALJ
2 also mentioned the GAF score Dr. Arnold had calculated. It was 52.²
3 The ALJ's response to Dr. Arnold's GAF calculation was mixed. On the
4 one hand, the ALJ was concerned he had relied upon Mr. Schelin's
5 impecuniousness, which, in the ALJ's opinion, was irrelevant to the
6 calculation of the GAF. On the other hand, the ALJ noted the GAF
7 score reflected "fairly moderate limitations." To the ALJ's way of
8 thinking, this suggested Mr. Schelin's limitations are less severe
9 than Dr. Arnold indicated. The ALJ provided one other reason for
10 discounting the 2011 evaluation. He was satisfied his determination
11 of Mr. Schelin's RFC addressed any work-related limitations.

12 As the preceding summary indicates, the ALJ's decision contains
13 several clear and convincing reasons for discounting Dr. Arnold's
14 2011 evaluation. One of the reasons was Dr. Arnold's heavy reliance
15 upon Mr. Schelin's subjective complaints. Dr. Arnold's reliance upon
16 them was problematic because they were not entirely credible. They
17 tended to overstate the intensity, persistence and limiting effects
18 of Mr. Schelin's symptoms. See *Tonapetyan v. Halter*, 242 F.3d 1144,
19 1149 (9th Cir.2001) (where a physician's opinion is based primarily
20 upon the claimant's subjective complaints and testing that is within

21
22 ²The acronym "GAF" stands for Global Assessment of
23 Functioning. "'A GAF score is a rough estimate of an
24 individual's psychological, social, and occupational functioning
25 used to reflect the individual's need for treatment.'" *Brewes v.*
26 *Comm'r of Soc. Sec. Admin.*, 682 F.3d 1157, 1160 n.2 (9th
Cir.2012) (quoting *Vargas v. Lambert*, 159 F.3d 1161, 1164 n.2
(9th Cir.1998)).

1 the claimant's control, and where the ALJ properly discounts the
2 claimant's credibility, the ALJ may discount the physician's
3 opinion). Another of the ALJ's reasons for discounting the 2011
4 evaluation was Mr. Schelin's employment history. Though Mr. Schelin
5 may not have worked very much, the fact remained he had worked. Then
6 there was the GAF score. Assuming it was calculated correctly (and
7 the ALJ was concerned Dr. Arnold had relied upon an improper
8 consideration), a score of 52 reflects "fairly moderate limitations."
9 Thus, it tended to undercut Dr. Arnold's pessimistic assessment.³

10 2012 Evaluation

11 Dr. Arnold also evaluated Mr. Schelin during June of 2012. Once
12 again, the ALJ did not fully credit Dr. Arnold's conclusions. He
13 began by noting Dr. Arnold had provided "little analysis about
14 claimant's work skills." To the extent Dr. Arnold had discussed work
15 skills, said the ALJ, his discussion suggested Mr. Schelin "could
16 perform some type of work activity." For example, Dr. Arnold
17 acknowledged Mr. Schelin "could perform simple tasks and concentrate
18 up to moderate periods[,] and he could "ride the bus." The ALJ also
19 took issue with Dr. Arnold's determination Mr. Schelin's "symptoms
20 would negatively affect [his] job performance[.]" The ALJ thought
21

22 ³"The fifth edition of the DSM, published in 2013, has
23 abandoned the GAF scale because of 'its conceptual lack of
24 clarity . . . and questionable psychometrics in routine
25 practice.'" *Williams v. Calvin*, 757 F.3d 610, 613 (7th Cir.2014)
26 (quoting American Psychiatric Association, Diagnostic and
Statistical Manual of Mental Disorders 16 (5th ed.2013)).

1 Dr. Arnold's pessimistic conclusion was unjustified "given the
2 unremarkable mental status examination/ability to relate
3 appropriately during the assessment."

4 As with the 2011 evaluation, the ALJ provided clear and
5 convincing reasons for discounting the 2012 evaluation. One of the
6 most important reasons was this: Dr. Arnold conceded Mr. Schelin
7 could work to some extent. He said as much in his report when
8 explaining Mr. Schelin's "[r]esidual capacity"; that is to say, what
9 he is "capable of doing despite his . . . mental health impairments":

10 Anthony will be able to remember locations and simple work
11 like tasks. He will be able to understand, remember and
12 carryout [sic] simple verbal and written instructions. He
13 will be able to concentrate and attend for short to
14 moderate periods. He will be able to ask simple questions.
15 He will be able to adhere to basic standards of neatness
16 and cleanliness. He will be able to use the bus
17 occasionally. He will be aware of normal hazards and take
appropriate precautions. He will be able to make plans on
his own.

18 (Tr. 369.) Despite the preceding assessment, Dr. Arnold remained
19 pessimistic. The ALJ explained Dr. Arnold's pessimism was
20 inconsistent with the results of the mental status exam he performed.
21 As the ALJ noted, the 2012 mental status exam revealed, "[T]he
22 claimant's appearance was unremarkable, he made full eye contact, his
23 thought content was appropriate, he performed serial sevens and
24 threes with one error, he spelled 'world' forwards/backwards, his
25 insight was poor and his judgment was limited." (Tr. 29.) It was
26 not unreasonable for the ALJ to note inconsistencies such as this.

1 The existence of such inconsistencies supported the ALJ's decision to
2 discount Dr. Arnold's opinions to some extent.

3 **ADEQUACY OF RECORD**

4 Mr. Schelin represented himself at the administrative hearing.
5 He argues the ALJ failed to adequately develop the record. See
6 *Tonapetyan*, 242 F.3d at 1150 ("The ALJ in a social security case has
7 an independent duty to fully and fairly develop the record and to
8 assure that the claimant's interests are considered." (internal
9 punctuation and citations omitted)). According to Mr. Schelin, the
10 ALJ should have requested records from a number of sources. Of
11 particular importance, says Mr. Schelin, are the records of his
12 treatment while he was incarcerated. The ALJ knew he had been
13 incarcerated in the prison's mental health unit. In Mr. Schelin's
14 opinion, that knowledge should have prompted the ALJ to seek the
15 prison's treatment records. Mr. Schelin is mistaken. "An ALJ's duty
16 to develop the record further is triggered only when there is
17 ambiguous evidence or when the record is inadequate to allow for
18 proper evaluation of the evidence." *Mayes v. Massanari*, 276 F.3d
19 453, 459-60 (9th Cir.2001). Mr. Schelin was evaluated numerous times
20 between the summer of 2011 and 2012, including twice by Dr. Arnold.
21 By examining those evaluations (especially any changes that occurred
22 during the course of the year), the ALJ could form a reasonably
23 accurate assessment of Mr. Schelin's mental impairments.

24 **NON-EXAMINING SOURCES**

25 The ALJ gave "great weight" to the testimony of non-examining
26 psychologist Joseph Cools, Ph.D. (Tr. 30.) He gave "significant

1 weight" to the opinions of three other non-examining experts. *Id.*
2 Mr. Schelin argues the ALJ erred by giving greater weight to the
3 opinions of non-examining experts than to the opinions of Dr. Arnold,
4 an examining psychologist. As Mr. Schelin observes, "Without a
5 personal medical evaluation it is almost impossible to assess the
6 residual functional capacity of any individual." *Penny v. Sullivan*,
7 2 F.3d 953, 958 (9th Cir.1993).

8 All things being equal, the opinion of an examining psychologist
9 is entitled to greater weight than the opinion of a non-examining
10 psychologist. However, *Penny* is distinguishable. To begin with, the
11 non-examining expert upon whom the ALJ relied heavily in *Penny* did
12 not consider the claimant's description of his pain. *Id.* at 957. In
13 addition, the ALJ improperly discounted the claimant's description of
14 the pain he was experiencing because the claimant did not present
15 medical evidence supporting his description of the severity of the
16 pain. *Id.* at 957. Finally, the ALJ's decision to discount the
17 claimant's description of his pain was contradicted both by the
18 medical records and by the testimony of an examining physician. *Id.*
19 at 957-58.

20 None of the circumstances that undermined the ALJ's decision in
21 *Penny* are present in this case. Here, unlike *Penny*, the ALJ did not
22 rely upon the testimony of a non-examining expert as a basis for
23 discounting either Mr. Schelin's testimony or Dr. Arnold's opinions.
24 Nor was Dr. Cools ignorant of Mr. Schelin's statements. To the
25 contrary, he treated them very seriously. This can be seen by
26 comparing Dr. Cools' and Dr. Arnold's respective assessments of the

1 extent to which Mr. Schelin's impairments limit his capacity to work.
2 While Dr. Arnold was somewhat more pessimistic than Dr. Cools, their
3 respective assessments are remarkably similar.

4 **CONCLUSION**

5 The record before the ALJ was well enough developed to permit
6 him to evaluate the credibility of Mr. Schelin and Dr. Arnold. The
7 ALJ did not err in his treatment of Mr. Schelin's testimony or Dr.
8 Arnold's opinions. As required by the law of this circuit, he gave
9 clear and convincing reasons for partially discounting their
10 evidence. Nor did the ALJ err in his treatment of the opinions of
11 the non-examining experts. One of the most important was Dr. Cools,
12 who was not unsympathetic to Mr. Schelin. To the contrary, Dr. Cools
13 treated Mr. Schelin's statements very seriously. Indeed, in the end,
14 Dr. Cools' assessment of Mr. Schelin's limitations was similar to Dr.
15 Arnold's; not identical to be sure, but similar. Of particular
16 significance is the fact neither expert thinks Mr. Schelin is
17 completely unable to work. To the contrary, both experts think Mr.
18 Schelin can perform a job that involves simple tasks and that does
19 not require interaction with either coworkers or the public. In that
20 respect, Dr. Arnold's assessment is not entirely inconsistent with
21 the ALJ's formulation of Mr. Schelin's residual functional capacity,
22 *viz.:*

23 The claimant should deal with things and not people. The
24 claimant should not have contact with the public and should have
25 limited contact with coworkers. The claimant is limited to
26 one[-] to two-step, simple tasks.

(Tr. 27.) This formulation is supported by substantial evidence.

1 Thus, the ALJ did not err at step four in the sequential evaluation
2 process. The final issue, then, is whether jobs of the type Mr.
3 Schelin is capable of performing exist in significant numbers in the
4 national economy. A vocational expert responded in the affirmative,
5 and the ALJ credited his testimony. The ALJ did not err in doing so.
6 Since there are jobs Mr. Schelin can perform, and since they exist in
7 significant numbers in the national economy, the ALJ had a
8 substantial basis for concluding Mr. Schelin is not disabled within
9 the meaning of 42 U.S.C. § 1382c(a)(3)(A).

10 **IT IS HEREBY ORDERED:**

11 1. The "Plaintiff's Motion for Summary Judgment" (**ECF No. 14**) is
12 **denied.**

13 2. The "Defendant's Motion for Summary Judgment" (**ECF No. 15**) is
14 **granted.**

15 **IT IS SO ORDERED.** The District Court Executive is hereby
16 directed to file this order, enter judgment accordingly, furnish
17 copies of this order and the judgment to counsel, and close this
18 case.

19 **DATED** this 11th day of February, 2015.

20
21 s/Fred Van Sickle
22 Fred Van Sickle
23 United States District Judge
24
25
26