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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

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RONALD G. JORGENSEN,

NO: 15-CV-0042-FVS

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Plaintiff,

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT AND DENYING
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT

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v.

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CAROLYN W. COLVIN,

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Defendant.

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BEFORE THE COURT are the parties' cross motions for summary

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judgment. ECF Nos. 13 and 14. This matter was submitted for consideration

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without oral argument. Plaintiff was represented by Joseph M. Linehan. Defendant

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was represented by David J. Burdett. The Court has reviewed the administrative

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

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discussed below, the court **GRANTS** Defendant's Motion for Summary Judgment,

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ECF No. 14, and **DENIES** Plaintiff's Motion for Summary Judgment, ECF No. 13.

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT AND DENYING PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT ~ 1

1 **JURISDICTION**

2 Plaintiff Ronald G. Jorgensen protectively filed for supplemental security
3 income (“SSI”) on January 19, 2011. Tr. 164-70. Plaintiff alleged an onset date of
4 January 1, 1990 (Tr. 164), which was amended at the hearing to January 19, 2011
5 (Tr. 39). Benefits were denied initially and upon reconsideration. Tr. 112-15, 120-
6 21. Plaintiff requested a hearing before an administrative law judge (“ALJ”), which
7 was held before ALJ Moira Ausems on July 25, 2013. Tr. 36-94. The ALJ denied
8 benefits (Tr. 13-32) and the Appeals Council denied review (Tr. 1). The matter is
9 now before this court pursuant to 42 U.S.C. § 405(g).

10 **STATEMENT OF FACTS**

11 The facts of the case are set forth in the administrative hearing and
12 transcripts, the ALJ’s decision, and the briefs of Plaintiff and the Commissioner,
13 and will therefore only be summarized here.

14 Plaintiff was 51 years old at the time of the hearing. *See* Tr. 164. The highest
15 level of school he completed was eighth grade, but he later obtained his GED. Tr.
16 187. Plaintiff previously worked as a cook, industrial cleaner, and assistant carpet
17 layer. Tr. 59-63, 82. Plaintiff claims he is disabled due to anxiety, depression, and
18 ADD. *See* Tr. 112. He testified that he would rather sleep, feels depressed, gets a
19 lot of “anxious feelings,” and takes medication “mainly for the anxiety.” Tr. 64,

1 70, 75. He testified that he has “a hard time grasping” with his right hand, and gets
2 headaches four or five times a week lasting for four to five hours. Tr. 71-72, 77.

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 susceptible
17 to more than one rational interpretation, [the court] must uphold the ALJ's findings
18 if they are supported by inferences reasonably drawn from the record.” *Molina v.*
19 *Astrue*, 674 F.3d 1104, 1111 (9th Cir.2012). Further, a district court “may not
20 reverse an ALJ's decision on account of an error that is harmless.” *Id.* An error is

1 harmless “where it is inconsequential to the [ALJ's] ultimate nondisability
2 determination.” *Id.* at 1115 (quotation and citation omitted). The party appealing
3 the ALJ's decision generally bears the burden of establishing that it was harmed.
4 *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. § 1382c(a)(3)(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 1382c(a)(3)(B).

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); 416.920(a)(4) (i)-(v). At step one, the Commissioner
19 considers the claimant's work activity. 20 C.F.R. §§ 404.1520(a)(4)(i);
20 416.920(a)(4)(i). If the claimant is engaged in “substantial gainful activity,” the

1 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
2 404.1520(b); 416.920(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); 416.920(a)(4)(ii). If the
6 claimant suffers from “any impairment or combination of impairments which
7 significantly limits [his or her] physical or mental ability to do basic work
8 activities,” the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c);
9 416.920(c). If the claimant's impairment does not satisfy this severity threshold,
10 however, the Commissioner must find that 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); 416.920(a) (4)(iii). If the impairment is as severe or more
15 severe than one of the enumerated impairments, the Commissioner must find the
16 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d); 416.920(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); 416.945(a)(1)), is relevant to both the fourth and fifth steps of the
3 analysis.

4 At step four, the Commissioner considers whether, in view of the claimant's
5 RFC, the claimant is capable of performing work that he or she has performed in
6 the past (“past relevant work”). 20 C.F.R. §§ 404.1520(a)(4)(iv); 416.920(a)(4)(iv).

7 If the claimant is capable of performing past relevant work, the Commissioner
8 must find that the claimant is not disabled. 20 C.F.R. § § 404.1520(f); 416.920(f).

9 If the claimant is incapable of performing such work, the analysis proceeds to step
10 five.

11 At step five, the Commissioner considers whether, in view of the claimant's
12 RFC, the claimant is capable of performing other work in the national economy. 20
13 C.F.R. §§ 404.1520(a)(4)(v); 416.920(a) (4)(v). In making this determination, the
14 Commissioner must also consider vocational factors such as the claimant's age,
15 education and work experience. *Id.* If the claimant is capable of adjusting to other
16 work, the Commissioner must find that the claimant is not disabled. 20 C.F.R. § §
17 404.1520(g)(1); 416.920(g) (1). If the claimant is not capable of adjusting to other
18 work, the analysis concludes with a finding that the claimant is disabled and is
19 therefore entitled to benefits. *Id.*

1 The claimant bears the burden of proof at steps one through four above.
2 *Lockwood v. Comm'r of Soc. Sec. Admin.*, 616 F.3d 1068, 1071 (9th Cir.2010). If
3 the analysis proceeds to step five, the burden shifts to the Commissioner to
4 establish that (1) the claimant is capable of performing other work; and (2) such
5 work “exists in significant numbers in the national economy.” 20 C.F.R. § §
6 404.1560(c); 416.960(c)(2); *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir.2012).

7 ALJ’S FINDINGS

8 At step one, the ALJ found Plaintiff has not engaged in substantial gainful
9 activity since January 19, 2011, the application date. Tr. 18. At step two, the ALJ
10 found Plaintiff has the following severe impairments: status post right fifth finger
11 fracture; occipital headaches; adjustment disorder with mixed anxiety and
12 depressed mood; and, mixed personality disorder. Tr. 18. At step three, the ALJ
13 found that Plaintiff does not have an impairment or combination of impairments
14 that meets or medically equals one of the listed impairments in 20 C.F.R. Part 404,
15 Subpt. P, App’x 1. Tr. 19. The ALJ then found that Plaintiff had the RFC

16 to perform a full range of work at all exertional levels but with the following
17 nonexertional limitations: he would be unable to perform work that involves
18 more than frequent fingering and feeling with the right, dominant hand;
19 more than simple routine tasks; more than brief, superficial contact with the
20 general public; or, the performance of cooperative teamwork endeavors with
coworkers.

Tr. 21. At step four, the ALJ found Plaintiff is capable of performing past relevant
work as an industrial cleaner. Tr. 26. In the alternative, at step five, the ALJ found

1 that considering the Plaintiff's age, education, work experience, and RFC, there are
2 jobs that exist in significant numbers in the national economy that Plaintiff also can
3 perform. Tr. 27. The ALJ concluded that Plaintiff has not been under a disability,
4 as defined in the Social Security Act, since January 19, 2011, the date the
5 application was filed. Tr. 28.

6 ISSUES

7 The question is whether the ALJ's decision is supported by substantial
8 evidence and free of legal error. Specifically, Plaintiff argues the ALJ improperly
9 rejected the opinions of treating and examining sources who determined that
10 Plaintiff's mental impairments were more severe than what was determined by the
11 ALJ. ECF No. 13 at 10-14. Defendant argues the ALJ's reasoning for rejecting the
12 medical opinion evidence was supported by substantial evidence. ECF No. 14 at 3-
13 7.

14 DISCUSSION

15 **Medical Opinions**

16 There are three types of physicians: "(1) those who treat the claimant
17 (treating physicians); (2) those who examine but do not treat the claimant
18 (examining physicians); and (3) those who neither examine nor treat the claimant
19 [but who review the claimant's file] (nonexamining [or reviewing] physicians)."
20 *Holohan v. Massanari*, 246 F.3d 1195, 1201-02 (9th Cir. 2001) (citations omitted).

1 Generally, a treating physician's opinion carries more weight than an examining
2 physician's, and an examining physician's opinion carries more weight than a
3 reviewing physician's. *Id.* If a treating or examining physician's opinion is
4 uncontradicted, the ALJ may reject it only by offering “clear and convincing
5 reasons that are supported by substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d
6 1211, 1216 (9th Cir. 2005). Conversely, “[i]f a treating or examining doctor's
7 opinion is contradicted by another doctor's opinion, an ALJ may only reject it by
8 providing specific and legitimate reasons that are supported by substantial
9 evidence.” *Id.* (citing *Lester v. Chater*, 81 F.3d 821, 830–31 (9th Cir. 1995)).

10 Plaintiff argues the ALJ improperly rejected the opinions of Plaintiff’s treating and
11 examining providers, including: Frank Rosekrans, Ph.D., John Arnold, Ph.D., and
12 Kris Korsgaard, MS, FNP.¹ ECF No. 13 at 9-14.

13
14 ¹ Plaintiff briefly notes that the ALJ relied on the testimony of medical expert Dr.
15 Joseph Cools, despite the fact that Dr. Cools “had never treated or examined” the
16 Plaintiff. ECF No. 13 at 10. “The opinion of a nonexamining physician cannot *by*
17 *itself* constitute substantial evidence that justifies the rejection of the opinion of
18 either an examining or treating physician.” *Lester*, 81 F.3d at 831 (emphasis
19 added). The ALJ accorded certain portions of Dr. Cools’ opinion significant weight
20 Tr. 25. However, Plaintiff does not argue with specificity that the ALJ improperly

1 **A. Dr. Frank Rosekrans**

2 In November 2010, Dr. Rosekrans conducted a psychological evaluation of
3 Plaintiff. Tr. 437-45. He diagnosed Plaintiff with adjustment disorder with mixed
4 anxiety and depressed mood; personality disorder NOS; and polysubstance
5 dependence, sustained full remission. Tr. 444. In the section entitled “functional
6 losses – barriers to employment,” Dr. Rosekrans indicated that “[a]t the present
7 time [Plaintiff] presents with a considerable amount of depression and anxiety. He
8 is a sad, anxious, and tense individual who finds it difficult to relax. [Plaintiff’s]
9 self-description on the PAI indicates significant suspiciousness and hostility in his
10 relations with others.” Tr. 444. Dr. Rosekrans found “it will be difficult for
11 [Plaintiff] to take orders from others;” but also noted that Plaintiff’s intention to
12 become a licensed carpet installer was “an appropriate vocational goal.” Tr. 444-
13 45. The ALJ “accord[ed] weight to [Dr.] Rosekrans’ conclusions to the extent that
14 they support the RFC findings in this decision.” Tr. 23.

15 Plaintiff argues that the ALJ “fails to address the portion of his evaluation
16 that supports more psychological impairments than was found by the ALJ’s RFC.”

17
18 _____
19 relied solely on Dr. Cools’ opinion to justify rejecting certain medical opinions.
20 Thus, the court declines to address this issue. *See Carmickle v. Comm’r of Soc.*
Sec. Admin., 533 F.3d 1155, 1161 n.2 (9th Cir. 2008).

1 ECF No. 13 at 14. In support of this argument, Plaintiff contends that the ALJ was
2 impermissibly “silent” as to Dr. Rosekrans’ conclusion that Plaintiff would have
3 difficulty taking orders from others. *Id.* (citing Tr. 444). However, Plaintiff appears
4 to misread the ALJ’s decision, which directly addresses Dr. Rosekrans’ conclusion
5 that it would be difficult for Plaintiff to take orders from others; and expressly
6 finds the limitation inconsistent with evidence that Plaintiff was working at that
7 time as a part time cook, “and there was no expressed complaint of workplace
8 conflict or an inability to adapt to the demands of regular employment.” Tr. 23,
9 439. As noted by the ALJ, Plaintiff continued to work in that position for a year
10 thereafter. Tr. 23, 62. Thus, the ALJ properly rejected Dr. Rosekrans’ opinion
11 because it was inconsistent with Plaintiff’s level of activity. *See Rollins v.*
12 *Massanari*, 261 F.3d 853, 856 (9th Cir. 2001). Furthermore, while not addressed
13 by Plaintiff, the ALJ found that “Dr. Rosekrans addressed the claimant’s
14 impairments characterizing a variety of symptomatology in support of his
15 diagnoses, however, he did not provide a clear assessment of the limitations posed
16 by the claimant’s contended symptoms.” Tr. 23. Thus, the ALJ did not err in
17 failing to specifically discuss and provide reasons for rejecting Dr. Rosekrans’
18 “opinions” because he did not assess any functional limitations. *See, e.g., Turner v.*
19 *Comm’r of Soc. Sec. Admin.*, 613 F.3d 1217, 1223 (9th Cir. 2010) (where
20 physician’s report did not assign any specific limitations or opinions in relation to

1 an ability to work, “the ALJ did not need to provide ‘clear and convincing reasons’
2 for rejecting [the] report because the ALJ did not reject any of [the report’s]
3 conclusions”); *see also Kay v. Heckler*, 754 F.2d 1545, 1549 (9th Cir. 1985) (the
4 “mere diagnosis of an impairment ... is not sufficient to sustain a finding of
5 disability.”). These were specific and legitimate reasons to reject Dr. Rosekrans’
6 opinion.

7 In addition, while not specifically addressed by Plaintiff, the ALJ rejected
8 Dr. Rosekrans’ opinion because it “was largely based on Plaintiff’s self-reported
9 symptoms and complaints, and the [ALJ] does not find the claimant entirely
10 credible.” Tr. 23. “An ALJ may reject a [] physician’s opinion if it is based ‘to a
11 large extent’ on a claimant’s self-reports that have been properly discounted as
12 incredible.” *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008). Here, as
13 noted by the Defendant, the Plaintiff fails to assign error to the ALJ’s adverse
14 credibility finding. ECF No. 14 at 6; *see Carmickle*, 533 F.3d at 1161 n.2 (the court
15 need not address issue not argued with specificity in Plaintiff’s brief). The ALJ’s
16 credibility findings in this case are specific, clear and convincing, and
17 unchallenged. *See* Tr. 21-22. Moreover, a review of Dr. Rosekrans’ opinion
18 supports the ALJ’s conclusion that it was based primarily on Plaintiff’s self-reports
19 and self-descriptions. *See* Tr. 437-445. The court notes that Dr. Rosekrans did
20 subject Plaintiff to objective psychological tests, however, he largely failed to

1 discuss how the test results resulted in any functional limitations or indicated
2 Plaintiff was unable to work. Tr. 439-41. Instead, Dr. Rosekrans appeared to
3 support Plaintiff's search for work as a licensed carpet installer as an "appropriate
4 vocational goal," so long as a medical examination confirmed that he could
5 physically perform the requisite job duties. Overall, "where evidence is susceptible
6 to more than one rational interpretation, it is the [Commissioner's] conclusion that
7 must be upheld." *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005). This was a
8 specific and legitimate reason for the ALJ to reject Dr. Rosekrans' opinion.

9 **B. Dr. John Arnold**

10 In May 2013, Dr. Arnold completed a psychological/psychiatric evaluation
11 of Plaintiff after conducting an interview and mental status exam, and reviewing
12 records of objective tests previously performed by other practitioners. Tr. 562-67.
13 Dr. Arnold diagnosed Plaintiff with major depression, recurrent, moderate to
14 severe; GAD; and rule out somatoform disorder. Tr. 564. Dr. Arnold also opined
15 that Plaintiff had numerous moderate and marked limitations, including marked
16 limitations in his ability to: perform activities within a schedule, maintain regular
17 attendance, and be punctual within customary tolerances without special
18 supervision; perform routine tasks without supervision; communicate and perform
19 effectively in a work setting; maintain appropriate behavior in a work setting; and
20 complete a normal work day and work week without interruptions from

1 psychologically based symptoms. Tr. 565. The ALJ assigned “little weight” to Dr.
2 Arnold’s findings for several reasons. Tr. 25.

3 First, the ALJ found that “his assessment of symptom severity is not
4 consistent with the assessments of other acceptable medical sources of record or
5 the claimant’s limited, conservative treatment history.”² Tr. 25. The consistency of
6 a medical opinion with the record as a whole is a relevant factor in evaluating that
7 medical opinion. *Orn v. Astrue*, 495 F.3d 625, 631 (9th Cir. 2007). Plaintiff argues
8 this reasoning is “boilerplate” and neglects to consider mental health evidence in
9 the record, including: treatment records from Community Health Association of
10 Spokane (“CHAS”), treatment with Mr. Korsgaard, and Dr. Rosekrans’ opinion.

11
12 ² Plaintiff also argues that the ALJ “appears” to be improperly discounting Dr.
13 Arnold’s opinion based on lack of mental health treatment. ECF No. 13 at 12
14 (citing *Nguyen v. Chater*, 100 F.3d 1462, 1465 (9th Cir. 1989) (“it is a questionable
15 practice to chastise one with a mental impairment for the exercise of poor
16 judgment in seeking rehabilitation”)). However, based solely on this statement, it is
17 difficult to discern whether the ALJ relied on Plaintiff’s lack of mental health
18 treatment as a reason to discount the severe limitations opined by Dr. Arnold.
19 Moreover, any error is harmless because the ALJ’s ultimate finding is adequately
20 supported by substantial evidence. *See Carmickle*, 533 F.3d at 1162-63.

1 ECF No. 13 at 12. However, as discussed above, while Dr. Rosekrans generally
2 opined that it would “be difficult for [Plaintiff] to take orders from others” (Tr.
3 444), his opinion was properly discounted because he did not find any specific
4 functional limitations on Plaintiff’s ability to work. *See* Tr. 444-45. Similarly,
5 while the records from Plaintiff’s treatment with Mr. Korsgaard confirms ongoing
6 mental health complaints resulting in a bipolar diagnosis; Mr. Korsgaard did not
7 specifically opine as to the severity of Plaintiff’s functioning. *See* Tr. 474-93, 532-
8 44, 550-61. Plaintiff also reported significant improvement in his mental health
9 symptoms with medication while in treatment with Mr. Korsgaard. Tr. 532-44.
10 Plaintiff was treated for a variety of complaints at CHAS, however, the records
11 specifically addressing his mental health treatment are from four years prior to the
12 relevant adjudicatory period. *See* Tr. 394-436, 516-24, 544-49. “Medical opinions
13 that predate the alleged onset of disability are of limited relevance.” *Carmickle*,
14 533 F.3d at 1165. Moreover, while not noted by Plaintiff, Dr. Jay Toews opined
15 that Plaintiff’s depression and anxiety symptoms are “minimal” and “would not
16 preclude [his] ability to function well on the job.” Tr. 449. The inconsistencies
17 between Dr. Arnold’s opinion and other assessments in the record was a specific
18 and legitimate reason, supported by substantial evidence, for the ALJ to reject Dr.
19 Arnold’s opinion.

1 Second, the ALJ found that Dr. Arnold’s report of examination “was
2 completed by checking boxes, with few objective findings in support of the degree
3 of limitation opined by him.” Tr. 25. As cited by the ALJ, opinions on a check-box
4 form or report which does not contain significant explanation of the basis for the
5 conclusions may be accorded little or no weight. *See Crane v. Shalala*, 76 F.3d
6 251, 253 (9th Cir. 1996). Further, an ALJ may discredit treating physicians’
7 opinions that are conclusory, brief, and unsupported by the record as a whole or by
8 objective medical findings. *Batson v. Comm’r, Soc. Sec. Admin.*, 359 F.3d 1190,
9 1195 (9th Cir. 2004). Plaintiff does not challenge this reasoning. *See Carmickle*,
10 533 F.3d at 1161 n.2 (court may decline to address an issue not raised with
11 specificity in Plaintiff’s briefing). The court’s review confirms that, aside from
12 minimal notes taken during the clinical interview with Plaintiff, Dr. Arnold’s
13 evaluation consists entirely of check-box assessment without explanation or
14 reference to objective findings. Tr. 563-67. This is a specific, legitimate reason for
15 rejecting Dr. Arnold’s opinion.

16 Finally, while not identified or challenged by Plaintiff, the ALJ noted that
17 Dr. Arnold conducted his evaluation under DSHS “criteria” and therefore his
18 findings are not consistent with “the regulatory requirements of the [SSA].” Tr. 25.
19 The court notes that this general observation by the ALJ that DSHS evaluative
20 “criteria” is not consistent with SSA regulations would not in itself justify rejection

1 of Dr. Arnold’s opinion. Any error is harmless, however, because the ALJ gave
2 additional specific and legitimate reasons, supported by substantial evidence, for
3 rejecting Dr. Arnold’s opinion. *See Carmickle*, 533 F.3d at 1162-63.

4 **C. Kris Korsgaard, MS, FNP**

5 Mr. Korsgaard provided mental health treatment to Plaintiff from May 2012
6 to June 2013. Tr. 474-93, 532-44, 550-61. During this time, Plaintiff was
7 alternately diagnosed with mood disorder NOS; general anxiety disorder; and
8 bipolar II disorder. *See, e.g.*, Tr. 483, 493. Plaintiff was prescribed medication to
9 address his mental health complaints. *See* Tr. 534. In an undated letter to Plaintiff’s
10 legal counsel, Mr. Korsgaard noted that Plaintiff’s symptoms are in “partial
11 remission,” however, “because of the episodic nature of his mental illness and in
12 light of the fact that we have no cure at this time, I would consider [Plaintiff]
13 disabled.” Tr. 544. The ALJ reviewed Mr. Korsgaard’s treatment records and
14 accorded the undated opinion letter “no weight or special significance.” Tr. 24-26.

15 As initial matter, while it is unclear whether it was offered as a reason to
16 discount his opinion, the ALJ noted that Mr. Korsgaard is not an acceptable source
17 under Social Security regulations. Tr. 26. Mr. Korsgaard is a nurse practitioner,
18 and thus in accordance with 20 C.F.R. § 416.913(a), the ALJ is correct that he is
19 not an “acceptable medical source.” Instead, Mr. Korsgaard is an “other source” as
20 defined in 20 C.F.R. § 416.913(d). As acknowledged by the ALJ, she is required to

1 “consider observations by nonmedical sources as to how an impairment affects a
2 claimant's ability to work.” *Sprague v. Bowen*, 812 F.2d 1226, 1232 (9th Cir.
3 1987). However, the ALJ need only provide “germane reasons” for disregarding an
4 “other source” opinion. *Molina*, 674 F.3d at 1111. Moreover, “[t]he fact that a
5 medical opinion is from an ‘acceptable medical source’ is a factor that may justify
6 giving that opinion greater weight than an opinion from a medical source who is
7 not an ‘acceptable medical source’.... However, depending on the particular facts
8 in a case, and after applying the factors for weighing opinion evidence, an opinion
9 from a medical source who is not an ‘acceptable medical source’ may outweigh the
10 opinion of an ‘acceptable medical source.’” SSR 06-03p (Aug. 9, 2006), *available*
11 *at* 2006 WL 2329939 at *5. Thus, while the ALJ may give less weight to Mr.
12 Korsgaard’s opinion because it is not from an “acceptable medical source;” it
13 would be error to reject Mr. Korsgaard’s opinion *solely* on this basis. In this case,
14 the ALJ gave several germane reasons for granting Mr. Korsgaard’s opinion no
15 weight.

16 First, the ALJ found that “Mr. Korsgaard’s diagnosis and assessment
17 essentially stand alone in the record, as it is not supported by the limited objective
18 medical evidence.” Tr. 26. “An ALJ may discredit treating [providers’] opinions
19 that are conclusory, brief, and unsupported by the record as a whole, or by
20 objective medical findings.” *Batson*, 359 F.3d at 1195. Plaintiff generally argues

1 that the ALJ's reasoning is "in contradiction" with the opinions of Dr. Arnold, Dr.
2 Rosekrans, and the medical records from CHAS. ECF No. 13 at 13. The court
3 acknowledges that these records include evidence that supports Plaintiff's claimed
4 mental health symptoms. However, as discussed in detail above, the ALJ properly
5 discounted the opinions of Dr. Arnold and Dr. Rosekrans; and the mental health
6 treatment records from CHAS were from well outside of the relevant adjudicatory
7 period. Moreover, Mr. Korsgaard diagnosed Plaintiff with bipolar disorder, and
8 opined that Plaintiff was "disabled." Tr. 543-44. Plaintiff does not cite to, nor does
9 the court discern, any assessment in the record that diagnoses Plaintiff with bipolar
10 disorder, or opines that Plaintiff is completely "disabled." Nor does Plaintiff refer
11 the court to specific objective findings that would support Mr. Korsgaard's
12 undated, one-paragraph, opinion that Plaintiff's mental illness has "no cure" and he
13 is therefore "disabled." *See* Tr. 544. For all of these reasons, this was a germane
14 reason to reject Mr. Korsgaard's opinion.

15 Second, the ALJ noted that "a finding of 'disabled' is an issue reserved to
16 the Commissioner of Social Security only, and Mr. Korsgaard's assessment,
17 therefore, is accorded no weight or special significance." Tr. 26. Plaintiff does not
18 identify or challenge this finding. *See Carmickle*, 533 F.3d at 1161 n.2 (court may
19 decline to address an issue not raised with specificity in Plaintiff's briefing). A
20 statement from a medical provider regarding Plaintiff's ability to work is not

1 considered to be a medical opinion; rather, it is an administrative finding that
2 would be dispositive of a case, and is therefore an issue reserved to the
3 Commissioner. *See* 20 C.F.R. §§ 404.1527(d)(1) and (3); SSR 96-5p, *available at*
4 1996 WL 374183 at *2 (July 2, 1996) (“treating source opinions on issues that are
5 reserved to the Commissioner are never entitled to controlling weight or special
6 significance.”). This was a germane reason to reject Mr. Korsgaard’s opinion that
7 Plaintiff was “disabled.”

8 **CONCLUSION**

9 After review the court finds the ALJ’s decision is supported by substantial
10 evidence and free of harmful legal error.

11 **ACCORDINGLY, IT IS HEREBY ORDERED:**

12 1. Plaintiff’s Motion for Summary Judgment, ECF No. 13, is **DENIED**.

13 2. Defendant’s Motion for Summary Judgment, ECF No. 14, is

14 **GRANTED.**

15 The District Court Executive is hereby directed to enter this Order and
16 provide copies to counsel, enter judgment in favor of the Defendant, and **CLOSE**
17 the file.

18 **DATED** March 15, 2016.

19 *s/Fred Van Sickle*

Fred Van Sickle
20 Senior United States District Judge