

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

May 30, 2018

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JAMES WAYNE YANCEY,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

No. 2:17-CV-00165-RHW

**ORDER GRANTING
DEFENDANT’S MOTION FOR
SUMMARY JUDGMENT**

Before the Court are the parties’ cross-motions for summary judgment, ECF Nos. 11, 12. Plaintiff James Wayne Yancey brings this action seeking judicial review, pursuant to 42 U.S.C. § 405(g), of the Commissioner’s final decision, which denied his applications for Disability Insurance Benefits and Supplemental Security Income under Titles II & XVI of the Social Security Act, 42 U.S.C §§ 401-434 & 1381-1383F. After reviewing the administrative record and briefs filed by the parties, the Court is now fully informed. For the reasons set forth below, the

1 Court **GRANTS** Defendant’s Motion for Summary Judgment and **DENIES** Mr.
2 Yancey’s Motion for Summary Judgment.

3 **I. Jurisdiction**

4 Mr. Yancey filed his applications for supplemental security income and
5 disability insurance benefits on November 3, 2013. AR 209-16. His alleged onset
6 date is April 26, 2013. AR 209. His applications were initially denied on February
7 27, 2014, AR 158-62, and on reconsideration on May 5, 2014, AR 168-73.

8 Administrative Law Judge (“ALJ”) Mark Kim held a hearing on December
9 18, 2015. AR 39-83. On January 13, 2016, ALJ Kim issued a decision finding Mr.
10 Yancey ineligible for disability benefits. AR 21-33. The Appeals Council denied
11 Mr. Yancey’s request for review on March 20, 2017, AR 1-5, making the ALJ’s
12 ruling the “final decision” of the Commissioner.

13 Mr. Yancey timely filed the present action challenging the denial of benefits
14 on May 16, 2017. ECF No. 3. Accordingly, his claims are properly before this
15 Court pursuant to 42 U.S.C. § 405(g).

16 **II. Sequential Evaluation Process**

17 The Social Security Act defines disability as the “inability to engage in any
18 substantial gainful activity by reason of any medically determinable physical or
19 mental impairment which can be expected to result in death or which has lasted or
20 can be expected to last for a continuous period of not less than twelve months.” 42

1 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). A claimant shall be determined to be
2 under a disability only if the claimant's impairments are of such severity that the
3 claimant is not only unable to do his previous work, but cannot, considering
4 claimant's age, education, and work experience, engage in any other substantial
5 gainful work that exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A) &
6 1382c(a)(3)(B).

7 The Commissioner has established a five-step sequential evaluation process
8 for determining whether a claimant is disabled within the meaning of the Social
9 Security Act. 20 C.F.R. §§ 404.1520(a)(4) & 416.920(a)(4); *Lounsbury v.*
10 *Barnhart*, 468 F.3d 1111, 1114 (9th Cir. 2006).

11 Step one inquires whether the claimant is presently engaged in "substantial
12 gainful activity." 20 C.F.R. §§ 404.1520(b) & 416.920(b). Substantial gainful
13 activity is defined as significant physical or mental activities done or usually done
14 for profit. 20 C.F.R. §§ 404.1572 & 416.972. If the claimant is engaged in
15 substantial activity, he or she is not entitled to disability benefits. 20 C.F.R. §§
16 404.1571 & 416.920(b). If not, the ALJ proceeds to step two.

17 Step two asks whether the claimant has a severe impairment, or combination
18 of impairments, that significantly limits the claimant's physical or mental ability to
19 do basic work activities. 20 C.F.R. §§ 404.1520(c) & 416.920(c). A severe
20 impairment is one that has lasted or is expected to last for at least twelve months,

1 and must be proven by objective medical evidence. 20 C.F.R. §§ 404.1508-09 &
2 416.908-09. If the claimant does not have a severe impairment, or combination of
3 impairments, the disability claim is denied, and no further evaluative steps are
4 required. Otherwise, the evaluation proceeds to the third step.

5 Step three involves a determination of whether any of the claimant's severe
6 impairments "meets or equals" one of the listed impairments acknowledged by the
7 Commissioner to be sufficiently severe as to preclude substantial gainful activity.
8 20 C.F.R. §§ 404.1520(d), 404.1525, 404.1526 & 416.920(d), 416.925, 416.926;
9 20 C.F.R. § 404 Subpt. P. App. 1 ("the Listings"). If the impairment meets or
10 equals one of the listed impairments, the claimant is *per se* disabled and qualifies
11 for benefits. *Id.* If the claimant is not *per se* disabled, the evaluation proceeds to
12 the fourth step.

13 Step four examines whether the claimant's residual functional capacity
14 enables the claimant to perform past relevant work. 20 C.F.R. §§ 404.1520(e)-(f)
15 & 416.920(e)-(f). If the claimant can still perform past relevant work, the claimant
16 is not entitled to disability benefits and the inquiry ends. *Id.*

17 Step five shifts the burden to the Commissioner to prove that the claimant is
18 able to perform other work in the national economy, taking into account the
19 claimant's age, education, and work experience. *See* 20 C.F.R. §§ 404.1512(f),
20 404.1520(g), 404.1560(c) & 416.912(f), 416.920(g), 416.960(c). To meet this

1 burden, the Commissioner must establish that (1) the claimant is capable of
2 performing other work; and (2) such work exists in “significant numbers in the
3 national economy.” 20 C.F.R. §§ 404.1560(c)(2); 416.960(c)(2); *Beltran v. Astrue*,
4 676 F.3d 1203, 1206 (9th Cir. 2012).

5 **III. Standard of Review**

6 A district court's review of a final decision of the Commissioner is governed
7 by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited, and the
8 Commissioner's decision will be disturbed “only if it is not supported by
9 substantial evidence or is based on legal error.” *Hill v. Astrue*, 698 F.3d 1144,
10 1158-59 (9th Cir. 2012) (citing § 405(g)). Substantial evidence means “more than
11 a mere scintilla but less than a preponderance; it is such relevant evidence as a
12 reasonable mind might accept as adequate to support a conclusion.” *Sandgathe v.*
13 *Chater*, 108 F.3d 978, 980 (9th Cir.1997) (quoting *Andrews v. Shalala*, 53 F.3d
14 1035, 1039 (9th Cir. 1995)) (internal quotation marks omitted). In determining
15 whether the Commissioner’s findings are supported by substantial evidence, “a
16 reviewing court must consider the entire record as a whole and may not affirm
17 simply by isolating a specific quantum of supporting evidence.” *Robbins v. Soc.*
18 *Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006) (quoting *Hammock v. Bowen*, 879
19 F.2d 498, 501 (9th Cir. 1989)).

1 In reviewing a denial of benefits, a district court may not substitute its
2 judgment for that of the ALJ. *Matney v. Sullivan*, 981 F.2d 1016, 1019 (9th Cir.
3 1992). If the evidence in the record “is susceptible to more than one rational
4 interpretation, [the court] must uphold the ALJ's findings if they are supported by
5 inferences reasonably drawn from the record.” *Molina v. Astrue*, 674 F.3d 1104,
6 1111 (9th Cir. 2012); *see also Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir.
7 2002) (if the “evidence is susceptible to more than one rational interpretation, one
8 of which supports the ALJ’s decision, the conclusion must be upheld”). Moreover,
9 a district court “may not reverse an ALJ's decision on account of an error that is
10 harmless.” *Molina*, 674 F.3d at 1111. An error is harmless “where it is
11 inconsequential to the [ALJ's] ultimate nondisability determination.” *Id.* at 1115.
12 The burden of showing that an error is harmful generally falls upon the party
13 appealing the ALJ's decision. *Shinseki v. Sanders*, 556 U.S. 396, 409–10 (2009).

14 **IV. Statement of Facts**

15 The facts of the case are set forth in detail in the transcript of proceedings,
16 and accordingly, are only briefly summarized here. Mr. Yancey was 39 years old at
17 the time of his hearing. AR 26. He has completed high school and two years of
18 college. *Id.* He has previously worked a store laborer, sales clerk, office helper,
19 host, and telephone solicitor. AR 32.

20 //

1 sitting/standing positions every one hour while staying on task; he cannot climb
2 ladders, ropes or scaffolds; he cannot crouch or crawl; he can occasionally climb
3 ramps and stairs; he can occasionally stoop and kneel; he must avoid all exposure
4 to excessive vibration and hazards such as moving machinery and unprotected
5 heights; he is limited to simple, routine tasks; he cannot have production rate or
6 pace work; he is limited to no interaction with the public beyond superficial
7 contact; and he is limited to occasional interaction with coworkers, with no tandem
8 tasks. AR 25.

9 The ALJ determined that Mr. Yancey is capable of performing past relevant
10 work as an officer helper. AR 32. The ALJ found he was capable of performing
11 this work as it is actually and generally performed. *Id.*

12 Because the ALJ found Mr. Yancey capable of performing some of his past
13 relevant work at step four, the ALJ did not perform a **step five** analysis to
14 determine whether in light of his age, education, work experience, and residual
15 functional capacity, there are jobs that exist in significant numbers in the national
16 economy that Mr. Yancey could perform.

17 VI. Issues for Review

18 Mr. Yancey argues that the Commissioner's decision is not free of legal
19 error and not supported by substantial evidence. Specifically, he argues the ALJ
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1 erred by improperly discrediting Mr. Yancey’s symptom claims and failing to
2 properly consider and weigh the opinion evidence. ECF No. 11 at 10.

3 **VII. Discussion**

4 **A. The ALJ did not improperly discredit Mr. Yancey’s symptom claims.**

5 An ALJ engages in a two-step analysis to determine whether a claimant’s
6 testimony regarding subjective symptoms is credible. *Tommasetti v. Astrue*, 533
7 F.3d 1035, 1039 (9th Cir. 2008). First, the claimant must produce objective
8 medical evidence of an underlying impairment or impairments that could
9 reasonably be expected to produce some degree of the symptoms alleged. *Id.*
10 Second, if the claimant meets this threshold, and there is no affirmative evidence
11 suggesting malingering, “the ALJ can reject the claimant’s testimony about the
12 severity of [his] symptoms only by offering specific, clear, and convincing reasons
13 for doing so.” *Id.*

14 In weighing a claimant's credibility, the ALJ may consider many factors,
15 including, “(1) ordinary techniques of credibility evaluation, such as the claimant's
16 reputation for lying, prior inconsistent statements concerning the symptoms, and
17 other testimony by the claimant that appears less than candid; (2) unexplained or
18 inadequately explained failure to seek treatment or to follow a prescribed course of
19 treatment; and (3) the claimant's daily activities.” *Smolen v. Chater*, 80 F.3d 1273,
20 1284 (9th Cir. 1996). Here, the ALJ found that the medically determinable

1 impairments could reasonably be expected to produce some of the symptoms Mr.
2 Yancey alleges; however, the ALJ determined that Mr. Yancey's statements
3 regarding intensity, persistence, and limiting effects of the symptoms were not
4 entirely credible. AR 26-29. The ALJ provided multiple reasons for discrediting
5 his subjective complaint testimony. AR *Id.*

6 **a. Physical impairments**

7 The ALJ found that Mr. Yancey's allegations regarding his physical
8 impairments are not supported by the record. AR 26-27. For example, he noted that
9 his scoliosis and kyphosis improved with conservative therapy. AR 26, 578-92.¹
10 Allegations of disabling pain may be rejected when they are managed with
11 conservative treatment. *Tommasetti*, 533 F.3d at 1039-1040. Likewise, Mr. Yancey
12 has acknowledged improvement from conservative treatment, such as physical
13 therapy and medication. AR 438, 441, 628.

14 Additionally, objective findings do not support his allegations. The ALJ
15 cited to January 2014 x-rays that revealed mild findings. AR 424-26. Likewise,
16 physical examinations have resulted in unremarkable findings, such as normal gait
17 and station, strength in extremities, and sensation and reflexes. AR 412, 447, 654.

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¹ The Court notes that the ALJ inadvertently cited to Exhibit 15F, as opposed
to Exhibit 14F, that does detail conservative treatment of Mr. Yancey's
scoliosis and kyphosis. Any error is harmless, as the record does support the
ALJ's findings.

1 The record also supports the ALJ's findings that Mr. Yancey's sleep apnea
2 was not disabling because it improved with treatment. If an impairment can be
3 controlled by treatment or medication, it cannot be considered disabling. *Brown v.*
4 *Barnhart*, 390 F.3d 535, 540 (9th Cir. 2004). Following a septoplasty in May 2014,
5 he demonstrated improvement with the condition. AR 649. By June 18, 2014, Mr.
6 Yancey's breathing was "much better," his pain was resolved, and his doctor stated
7 that he was "doing well." AR 650.

8 **b. Mental impairments**

9 As with his physical impairments, the ALJ found that the record did not
10 support a finding that Mr. Yancey's mental impairments were disabling. AR 27-29.
11 The ALJ found that despite his Asperger's syndrome and objective findings that
12 support that diagnosis, Mr. Yancey was able to maintain employment in a variety
13 of jobs, including those that require significant interaction with the public, such as
14 customer service and telemarketing. AR 28. Mr. Yancey also demonstrated a
15 subjective belief that he is capable of working by his continued efforts to find a
16 job, even cutting a doctor's appointment short to attend a job interview. AR 628.
17 This is also supported by the findings of Dr. Richard G. Weiler, PhD, who noted
18 that Mr. Yancey had motivation to participate in training programs in order to
19 obtain full-time employment. AR 357-58. The ALJ interpreted these facts to
20 demonstrate that Mr. Yancey is not disabled. When the ALJ presents a reasonable

1 interpretation, such as this, and it is supported by the evidence, it is not the role of
2 the courts to second-guess it. *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir.
3 2001).

4 The objective findings also supports the ALJ's conclusion. Mr. Yancey's
5 mental status examinations findings have generally been unremarkable. AR 376,
6 382, 422, 443, 447, 610, 625, 633, 638. The record also supports the ALJ's
7 findings that Mr. Yancey's anxiety and depression are tied to situational stressors,
8 such as unemployment, trouble securing housing, and family stress. AR 381-82,
9 402, 602, 607.

10 Additionally, the record shows that Mr. Yancey's mental impairments are
11 managed by medication. AR 381, 602, 607, 628. If an impairment can be
12 controlled by treatment or medication, it cannot be considered disabling. *Brown*,
13 390 F.3d at 540.

14 Finally, the ALJ noted numerous activities of daily living that are
15 inconsistent with disabling mental impairments. AR 29. These include cooking,
16 household chores, watching television, listening to music, writing, and managing
17 finances. *Id.* In particular, Mr. Yancey stated on his function report from
18 November 2013 that he could maintain attention for "several hours" when he was
19 interested, contrary to allegations that he is impaired in his ability to maintain
20 concentration and focus. AR 254.

1 In sum, the ALJ provided numerous reasons for the findings related to Mr.
2 Yancey's credibility that are supported by the record. The Court does not find the
3 ALJ erred when assessing Mr. Yancey's credibility because Mr. Yancey's
4 allegations of complete disability are inconsistent with the record and medical
5 evidence, and Mr. Yancey's activities reflect a level of functioning that is
6 inconsistent with his claims of total disability.

7 **B. The ALJ properly weighed the medical opinion evidence.**

8 **a. Legal standard**

9 The Ninth Circuit has distinguished between three classes of medical
10 providers in defining the weight to be given to their opinions: (1) treating
11 providers, those who actually treat the claimant; (2) examining providers, those
12 who examine but do not treat the claimant; and (3) non-examining providers, those
13 who neither treat nor examine the claimant. *Lester v. Chater*, 81 F.3d 821, 830 (9th
14 Cir. 1996) (as amended).

15 A treating provider's opinion is given the most weight, followed by an
16 examining provider, and finally a non-examining provider. *Id.* at 830-31. In the
17 absence of a contrary opinion, a treating or examining provider's opinion may not
18 be rejected unless "clear and convincing" reasons are provided. *Id.* at 830. If a
19 treating or examining provider's opinion is contradicted, it may only be discounted
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1 for “specific and legitimate reasons that are supported by substantial evidence in
2 the record.” *Id.* at 830-31.

3 The ALJ may meet the specific and legitimate standard by “setting out a
4 detailed and thorough summary of the facts and conflicting clinical evidence,
5 stating his interpretation thereof, and making findings.” *Magallanes v. Bowen*, 881
6 F.2d 747, 751 (9th Cir. 1989) (internal citation omitted). When rejecting a treating
7 provider’s opinion on a psychological impairment, the ALJ must offer more than
8 his or her own conclusions and explain why he or she, as opposed to the provider,
9 is correct. *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir. 1988).

10 **b. Dr. Debra Brown, PhD and Dr. John Arnold, PhD**

11 Dr. Brown performed a Psychological/Psychiatric Evaluation on Mr. Yancey
12 on January 21, 2014. AR 393-98. Dr. Brown found moderate limitations in six
13 areas of basic work activity, marked limitations in six additional areas of basic
14 work activity, and severe limitations in the ability to adapt to changes in a routine
15 work setting. AR 395. The ALJ assigned little weight to Dr. Brown’s opinion for
16 numerous reasons. AR 30.

17 Dr. Arnold performed a Psychological/Psychiatric Evaluation on September
18 17, 2015. AR 596-600. Dr. Arnold found moderate limitations in six areas of basic
19 work activity, marked limitations in three areas, and severe limitations in four
20 areas, including the ability to adapt to changes in a routine work setting. AR 598.

1 He rated the overall severity rating of Mr. Yancey’s mental impairments to be
2 severe. *Id.* The ALJ gave little weight to Dr. Arnold’s opinion, and he gave the
3 same reasons for rejecting both Dr. Brown and Dr. Arnold’s opinions. AR 30-31.

4 The ALJ first noted that the evaluations are less reliable in the Social
5 Security context because the state Department of Social and Health Services
6 (“DSHS”), the body for which Dr. Brown and Dr. Arnold performed their
7 evaluations, uses different regulations to determine benefit eligibility and relies
8 heavily on self-reported symptoms. AR 30, 31. An ALJ may discount a treating
9 provider’s opinion if it is based largely on the claimant’s self-reports and not on
10 clinical evidence, and the ALJ finds the claimant not credible. *Ghanim v. Colvin*,
11 763 F.3d 1154, 1162 (9th Cir. 2014). Dr. Brown notes in her report that she did not
12 review any records and her recorded observations were mostly normal (AR 393,
13 396-97), which supports the ALJ’s determination that the report is largely based on
14 self-reporting. Dr. Arnold indicated that he reviewed a “clinical interview and
15 mental status exam,” but he does not indicate to which he refers. AR 596. There is
16 no indication he reviewed the record as a whole or that he performed any specific
17 objective testing. AR 596-600.

18 The ALJ also found that the opinions were less reliable because they were in
19 check-box format with few objective findings to support them. AR 30, 31. This is
20 permissible. *See Garrison v. Colvin*, 759 F.3d 995, 1013 (9th Cir. 2014) (check-

1 box formats are entitled to less weight when unsupported and not supported by
2 experiences and records); *see also Crane v. Shalala*, 76 F.3d 251, 253 (9th Cir.
3 1996). As neither doctor reviewed records, the findings are limited to the single
4 visit and, as stated prior, based on significant acceptance of self-reported
5 symptoms.

6 Finally and most importantly, the ALJ rejected the opinions because they are
7 not supported by the record. AR 30, 31. An ALJ may reject a doctor's opinion
8 when it is inconsistent with other evidence in the record. *See Morgan v. Comm'r of*
9 *the Soc. Sec. Admin.*, 169 F.3d 595, 602-603 (9th Cir. 1999). Contrary to the
10 numerous limitations opined, the record reflects benign mental status findings. AR
11 376, 382, 422, 443, 447, 610, 625, 633, 638. Additionally, neither doctor appears
12 aware that the record indicates the positive impact of medication on Mr. Yancey's
13 mental impairments. AR 381, 602, 607, 628.

14 When the ALJ presents a reasonable interpretation that is supported by the
15 evidence, it is not the role of the courts to second-guess it. *Rollins*, 261 F.3d 853,
16 857. The Court "must uphold the ALJ's findings if they are supported by inferences
17 reasonably drawn from the record." *Molina*, 674 F.3d 1104, 1111; *see also*
18 *Thomas*, 278 F.3d 947, 954 (if the "evidence is susceptible to more than one
19 rational interpretation, one of which supports the ALJ's decision, the conclusion
20 must be upheld"). In discounting Dr. Brown and Dr. Arnold's opinions, the ALJ

1 supported the determination with specific and legitimate reasons supported by
2 substantial evidence in the record. Thus, the Court finds the ALJ did not err in his
3 consideration of these opinions.

4 **c. Dr. Nathan Henry, PsyD**

5 Dr. Henry performed a Psychological Diagnostic Evaluation on Mr. Yancey
6 on January 13, 2014. AR 386-91. Dr. Henry noted that Mr. Yancey had “lifelong
7 deficits in social relationships/communication, restricted/exaggerated interests, and
8 difficulty with changes in routine.” AR 390. He opined that these deficient have
9 long-term impairment and that his prognosis “appears guarded.” AR 391. He also
10 found that Mr. Yancey did not appear to have cognitive impairment. *Id.*

11 The ALJ gave some weight to this opinion, but gave more weight to the
12 opinion of impartial psychological expert Dr. Marian Martin, PhD, who testified at
13 the hearing. AR 30. The ALJ gave Dr. Martin’s opinion more weight because she
14 had the opportunity to review the full record and because her opinion was more
15 consistent with the objective medical findings and Mr. Yancey’s demonstrated
16 functional abilities. *Id.*

17 The ALJ is required to consider all medical opinion evidence, and the ALJ is
18 also assigned the duty to be the “final arbitrator” in resolving medical evidence
19 ambiguities. *Tommasetti*, 533 F.3d at 1041. Here, the ALJ evaluated both opinions
20 and determined that Dr. Martin’s was more reliable, and the ALJ then provided

1 specific and legitimate reasons for this finding. *Lester*, 81 F.3d at 830-31. The
2 Court finds no error.

3 **d. Dr. Robert C. Thompson, M.D., and Dr. Marian Martin, PhD**

4 Dr. Thompson and Dr. Martin both testified as impartial medical experts at
5 the hearing. AR 39-83. The ALJ afforded their opinions significant weight. AR 29-
6 30. Both doctors reviewed the medical record and have “an understanding of
7 Social Security disability programs and evidentiary requirements.” AR 29. In
8 addition, the ALJ explained that the opinions of both doctors were supported by
9 the record. AR 29-30. In particular, Dr. Thompson’s findings were supported by
10 benign x-rays, physical examination findings, and Mr. Yancey’s statements that he
11 can lift up to 40 pounds. AR 29. Dr. Martin’s findings are supported by benign
12 mental status findings in the record and Mr. Yancey’s reports of improvement of
13 his mental impairments with medication. AR 29-30. The ALJ additionally found
14 both doctors’ opinions consistent with the opinion of the Disability Determination
15 Services (“DDS”) consultant that reviewed the record and rendered an opinion in
16 May 2014. AR 29-30, 141-57.

17 Again, Mr. Yancey takes issue with the weight given to these doctors, but as
18 discussed prior regarding Dr. Henry’s opinion, the ALJ is assigned the duty to be
19 the “final arbitrator” in resolving medical evidence ambiguities. *Tommasetti*, 533
20 F.3d at 1041. Again, the ALJ determined that these opinions were the most reliable

1 and provided multiple specific and legitimate reasons for this determination.

2 *Lester*, 81 F.3d at 830-31. The Court finds no error.

3 **C. The ALJ did not err in the weighing of the non-medical lay witness**
4 **opinions.**

5 The ALJ gave little weight to the lay witness opinions of Pennie Hartley, a
6 friend of Mr. Yancey’s family; Mark Kast, Mr. Yancey’s friend and former
7 supervisor; and Patricia Oliphant, Mr. Yancey’s grandmother. AR 31- 32. The ALJ
8 gave partial weight to the vocational report of Cindy Wright. *Id.* Mr. Yancey
9 argues that these were rejected for “insufficient reasons” and are “ancillary errors”
10 to be addressed on remand. ECF No. 11 at 19. Mr. Yancey must do more than
11 simply issue spot; he has the burden of showing prejudicial error. *See Molina*, 674
12 F.3d at 1110-11. Mr. Yancey has left it to the Court to guess at his specific
13 contentions, the evidence that causes him concern, and how the ALJ erred with
14 regard to this evidence.² *United States v. Renzi*, 651 F.3d 1012, 1030 (9th Cir.
15 2011); *Indep. Towers of Washington v. Washington*, 350 F.3d 925, 929–30 (9th
16 Cir. 2003).

17 Nevertheless, the Court finds that the ALJ did not err with regard to these
18 lay witness opinions. These opinions are classified as “other source.” 20 C.F.R. §§

19 _____
20 ² In addition, Mr. Yancey is mistaken in his reply brief that the Commissioner
conceded the issue by failing to respond, as the Commissioner noted that Mr.
Yancey failed to make arguments regarding these other opinions. ECF No. 12 at
18.

1 404.1513(d), 416.913(d). An ALJ is required to “consider observations by non-
2 medical sources as to how an impairment affects a claimant's ability to work.”
3 *Sprague v. Bowen*, 812 F.2d 1226, 1232 (9th Cir.1987). Non-medical testimony
4 can never establish a diagnosis or disability absent corroborating competent
5 medical evidence. *Nguyen v. Chater*, 100 F.3d 1462, 1467 (9th Cir.1996). An ALJ
6 is obligated to give reasons germane to “other source” testimony before
7 discounting it. *Dodrill v. Shalala*, 12 F.3d 915 (9th Cir.1993).

8 Inconsistency with evidence in the medical record is a germane reason to
9 reject other source testimony. *Bayliss v. Barnhart*, 427 F.3d 1211, 1218 (9th Cir.
10 2005). The ALJ described inconsistencies with the record for each opinion. AR 31-
11 32. The ALJ also rejected Mr. Kast’s and Ms. Oliphant’s opinions because they
12 were based on subjective statements and Mr. Yancey was previously found to be
13 not credible. AR 31-32; *see supra* at pp. 9-13. This is a germane reason for
14 rejecting a lay witness opinion. *See Valentine v. Comm’r Soc. Sec. Admin.*, 574
15 F.3d 685, 694 (9th Cir. 2009) (upholding the ALJ’s rejection of a lay witness for
16 the same reasons the ALJ rejected the claimant’s credibility).

17 **D. There are no ancillary errors that warrant remand.**

18 Mr. Yancey argues that had his symptom testimony and the medical
19 evidence discussed above been properly considered, a different residual functional
20 capacity and resulting hypothetical to the vocational expert would have been

1 reached. ECF No. 11 at 20. This is merely an attempt to repeat the same arguments
2 discussed above. The Court will uphold the ALJ's findings when a claimant
3 attempts to restate the argument that the residual functional capacity finding did
4 not account for all limitations and the resulting vocational expert hypothetical was
5 incomplete. *Stubbs-Danielson v. Astrue*, 539 F.3d 1169, 1175-76 (9th Cir. 2008).

6 **VIII. Conclusion**

7 Having reviewed the record and the ALJ's findings, the Court finds the
8 ALJ's decision is supported by substantial evidence and free from legal error.

9 Accordingly, **IT IS ORDERED:**

10 1. Plaintiff's Motion for Summary Judgment, **ECF No. 11**, is **DENIED**.

11 2. Defendant's Motion for Summary Judgment, **ECF No. 12**, is
12 **GRANTED**.

13 3. The District Court Executive is directed to enter judgment in favor of
14 Defendant and against Plaintiff.

15 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
16 Order, forward copies to counsel and **close the file**.

17 **DATED** this 30th day of May, 2018.

18 *s/Robert H. Whaley*
19 ROBERT H. WHALEY
Senior United States District Judge