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

Dec 17, 2018

SEAN F. MCAVOY, CLERK

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

BERNARDO B.,
Plaintiff,

vs.

**COMMISSIONER OF SOCIAL
SECURITY,**
Defendant.

No. 4:17-cv-05174-MKD

**ORDER DENYING PLAINTIFF’S
MOTION FOR SUMMARY
JUDGMENT AND GRANTING
DEFENDANT’S MOTION FOR
SUMMARY JUDGMENT**

ECF Nos. 20, 21

BEFORE THE COURT are the parties’ cross-motions for summary judgment. ECF Nos. 20, 21. The parties consented to proceed before a magistrate judge. ECF No. 6. The Court, having reviewed the administrative record and the parties’ briefing, is fully informed. For the reasons discussed below, the Court denies Plaintiff’s Motion, ECF No. 20, and grants Defendant’s Motion, ECF No. 21.

ORDER - 1

1 **JURISDICTION**

2 The Court has jurisdiction over this case pursuant to 42 U.S.C. § 1383(c)(3).

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 (9th Cir. 2012). “Substantial evidence” means “relevant evidence that a
9 reasonable mind might accept as adequate to support a conclusion.” Id. at 1159
10 (quotation and citation omitted). Stated differently, substantial evidence equates to
11 “more than a mere scintilla[,] but less than a preponderance.” Id. (quotation and
12 citation omitted). In determining whether the standard has been satisfied, a
13 reviewing court must consider the entire record as a whole rather than searching
14 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. Edlund v. Massanari, 253 F.3d 1152,
17 1156 (9th Cir. 2001). If the evidence in the record “is susceptible to more than one
18 rational interpretation, [the court] must uphold the ALJ’s findings if they are
19 supported by inferences reasonably drawn from the record.” Molina v. Astrue, 674
20 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court “may not reverse an

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

6 **FIVE-STEP EVALUATION PROCESS**

7 A claimant must satisfy two conditions to be considered "disabled" within
8 the meaning of the Social Security Act. First, the claimant must be "unable to
9 engage in any substantial gainful activity by reason of any medically determinable
10 physical or mental impairment which can be expected to result in death or which
11 has lasted or can be expected to last for a continuous period of not less than twelve
12 months." 42 U.S.C. § 1382c(a)(3)(A). Second, the claimant's impairment must be
13 "of such severity that he is not only unable to do his previous work[,] but cannot,
14 considering his age, education, and work experience, engage in any other kind of
15 substantial gainful work which exists in the national economy." 42 U.S.C. §
16 1382c(a)(3)(B).

17 The Commissioner has established a five-step sequential analysis to
18 determine whether a claimant satisfies the above criteria. See 20 C.F.R. §
19 416.920(a)(4)(i)-(v). At step one, the Commissioner considers the claimant's work
20 activity. 20 C.F.R. § 416.920(a)(4)(i). If the claimant is engaged in "substantial

1 gainful activity,” the Commissioner must find that the claimant is not disabled. 20
2 C.F.R. § 416.920(b).

3 If the claimant is not engaged in substantial gainful activity, 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. § 416.920(a)(4)(ii). If the claimant suffers from
6 “any impairment or combination of impairments which significantly limits [his or
7 her] physical or mental ability to do basic work activities,” the analysis proceeds to
8 step three. 20 C.F.R. § 416.920(c). If the claimant’s impairment does not satisfy
9 this severity threshold, however, the Commissioner must find that the claimant is
10 not disabled. 20 C.F.R. § 416.920(c).

11 At step three, the Commissioner compares the claimant’s impairment to
12 severe impairments recognized by the Commissioner to be so severe as to preclude
13 a person from engaging in substantial gainful activity. 20 C.F.R. §
14 416.920(a)(4)(iii). If the impairment is as severe or more severe than one of the
15 enumerated impairments, the Commissioner must find the claimant disabled and
16 award benefits. 20 C.F.R. § 416.920(d).

17 If the severity of the claimant’s impairment does not meet or exceed the
18 severity of the enumerated impairments, the Commissioner must pause to assess
19 the 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. §
2 416.945(a)(1), is relevant to both the fourth and fifth steps of the analysis.

3 At step four, the Commissioner considers whether, in view of the claimant's
4 RFC, the claimant is capable of performing work that he or she has performed in
5 the past (past relevant work). 20 C.F.R. § 416.920(a)(4)(iv). If the claimant is
6 capable of performing past relevant work, the Commissioner must find that the
7 claimant is not disabled. 20 C.F.R. § 416.920(f). If the claimant is incapable of
8 performing such work, the analysis proceeds to step five.

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

18 The claimant bears the burden of proof at steps one through four above.
19 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to
20 step five, the burden shifts to the Commissioner to establish that (1) the claimant is

1 capable of performing other work; and (2) such work “exists in significant
2 numbers in the national economy.” 20 C.F.R. § 416.960(c)(2); Beltran v. Astrue,
3 700 F.3d 386, 389 (9th Cir. 2012).

4 **ALJ’S FINDINGS**

5 Plaintiff is an individual who received supplemental security income
6 benefits based on disability as a child. Tr. 35. As part of the review process for
7 determining disability in adults when the claimant reaches age 18, it was
8 determined on October 24, 2012 that Plaintiff was no longer disabled as of October
9 1, 2012. Tr. 36. This finding was upheld upon reconsideration. Tr. 37-48.

10 Plaintiff appeared at a hearing before an administrative law judge (ALJ) on
11 December 11, 2014. Tr. 688-713. On January 30, 2015, the ALJ denied Plaintiff’s
12 claim. Tr. 25-34.

13 At step one, the ALJ noted that Plaintiff was eligible for supplemental
14 security income benefits as a child, so an evaluation of substantial gainful activity
15 was not required. Tr. 26-27. At step two, the ALJ found Plaintiff had the
16 following severe impairments: learning disorder and major depressive disorder.
17 Tr. 27. At step three, the ALJ found Plaintiff did not have an impairment or
18 combination of impairments that meets or medically equals the severity of a listed
19 impairment. Tr. 28. The ALJ then concluded that Plaintiff had the RFC to
20 perform medium work with the following limitations:

1 [Plaintiff] is able to understand, remember, and carry out simple, routine,
2 and repetitive tasks and instructions. He should have minimal changes in his
3 work routine, with no production pace of work, no interaction with the
general public, and only brief occasional interaction with coworkers and
supervisors. He should deal with things rather than people.

4 Tr. 29.

5 At step four, the ALJ found that Plaintiff had no past relevant work. Tr. 32.

6 At step five, the ALJ concluded that, considering Plaintiff's age, education, work
7 experience, RFC, and testimony from a vocational expert, there were jobs that
8 existed in significant numbers in the national economy that Plaintiff could perform,
9 such as dishwasher, laundry worker II, and lab equipment cleaner. Tr. 33. The
10 ALJ concluded that Plaintiff's disability ended on October 1, 2012, and that
11 Plaintiff has not become disabled again since that date. Tr. 34. On June 9, 2016,
12 the Appeals Council denied review, Tr. 11-13, making the ALJ's decision the
13 Commissioner's final decision for purposes of judicial review. See 42 U.S.C. §
14 1383(c)(3).

15 ISSUES

16 Plaintiff seeks judicial review of the Commissioner's final decision denying
17 him supplemental security income benefits under Title XVI of the Social Security
18 Act. ECF No. 20. Plaintiff raises the following issues for this Court's review:

- 19 1. Whether the ALJ properly weighed Plaintiff's symptom testimony;
- 20 2. Whether the ALJ properly weighed the lay opinion evidence; and

1 3. Whether the ALJ properly found at step five that Plaintiff could perform
2 other work in the national economy.

3 ECF No. 20 at 10.

4 DISCUSSION

5 A. Plaintiff's Symptom Testimony

6 Plaintiff faults the ALJ for failing to rely on reasons that were clear and
7 convincing in discrediting his symptom claims. ECF No. 20 at 12-15.

8 An ALJ engages in a two-step analysis to determine whether a claimant's
9 testimony regarding subjective pain or symptoms is credible. "First, the ALJ must
10 determine whether there is objective medical evidence of an underlying
11 impairment which could reasonably be expected to produce the pain or other
12 symptoms alleged." *Molina*, 674 F.3d at 1112 (internal quotation marks omitted).
13 "The claimant is not required to show that [his] impairment could reasonably be
14 expected to cause the severity of the symptom [he] has alleged; [he] need only
15 show that it could reasonably have caused some degree of the symptom." *Vasquez*
16 *v. Astrue*, 572 F.3d 586, 591(9th Cir. 2009) (internal quotation marks omitted).

17 Second, "[i]f the claimant meets the first test and there is no evidence of
18 malingering, the ALJ can only reject the claimant's testimony about the severity of
19 the symptoms if [the ALJ] gives 'specific, clear and convincing reasons' for the
20 rejection." *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (quoting

1 Lingenfelter v. Astrue, 504 F.3d 1028, 1036 (9th Cir. 2007)). “General findings are
2 insufficient; rather, the ALJ must identify what testimony is not credible and what
3 evidence undermines the claimant’s complaints.” Id. (quoting Lester v. Chater, 81
4 F.3d 821, 834 (9th Cir. 1995)); Thomas v. Barnhart, 278 F.3d 947, 958 (9th Cir.
5 2002) (“[T]he ALJ must make a credibility determination with findings sufficiently
6 specific to permit the court to conclude that the ALJ did not arbitrarily discredit
7 claimant’s testimony.”). “The clear and convincing [evidence] standard is the most
8 demanding required in Social Security cases.” Garrison v. Colvin, 759 F.3d 995,
9 1015 (9th Cir. 2014) (quoting *Moore v. Comm’r of Soc. Sec. Admin.*, 278 F.3d 920,
10 924 (9th Cir. 2002)).

11 Factors to be considered in evaluating the intensity, persistence, and limiting
12 effects of an individual’s symptoms include: (1) daily activities; (2) the location,
13 duration, frequency, and intensity of pain or other symptoms; (3) factors that
14 precipitate and aggravate the symptoms; (4) the type, dosage, effectiveness, and
15 side effects of any medication an individual takes or has taken to alleviate pain or
16 other symptoms; (5) treatment, other than medication, an individual receives or has
17 received for relief of pain or other symptoms; (6) any measures other than
18 treatment an individual uses or has used to relieve pain or other symptoms; and (7)
19 any other factors concerning an individual’s functional limitations and restrictions
20 due to pain or other symptoms. SSR 16-3p, 2016 WL 1119029, at *7. The ALJ is

1 instructed to “consider all of the evidence in an individual’s record,” “to determine
2 how symptoms limit ability to perform work-related activities.” Id. at *2.

3 The ALJ concluded that Plaintiff’s medically determinable impairments
4 could reasonably be expected to cause Plaintiff’s alleged symptoms, but that
5 Plaintiff’s testimony about the intensity, persistence, and limiting effects of his
6 symptoms were not entirely credible. Tr. 30.

7 1. Lack of Supporting Medical Evidence

8 The ALJ found Plaintiff’s symptom complaints were not supported by the
9 medical evidence. Tr. 30. An ALJ may not discredit a claimant’s symptom
10 testimony and deny benefits solely because the degree of the symptoms alleged is
11 not supported by objective medical evidence. *Rollins v. Massanari*, 261 F.3d 853,
12 857 (9th Cir. 2001); *Bunnell v. Sullivan*, 947 F.2d 341, 346-47 (9th Cir. 1991);
13 *Fair v. Bowen*, 885 F.2d 597, 601 (9th Cir. 1989). However, the medical evidence
14 is a relevant factor in determining the severity of a claimant’s pain and its disabling
15 effects. *Rollins*, 261 F.3d at 857; 20 C.F.R. § 416.929(c)(2). Minimal objective
16 evidence is a factor which may be relied upon to discount a claimant’s testimony,
17 although it may not be the only factor. *Burch v. Barnhart*, 400 F.3d 676, 680 (9th
18 Cir. 2005).

19 Here, the ALJ noted that Plaintiff testified that he could not work due to
20 depression, feeling overwhelmed and hopeless, anxiety, and difficulty with

1 memory. Tr. 30; see Tr. 705-09. However, the ALJ noted that the medical
2 evidence did not support a finding that these symptoms prohibited Plaintiff from
3 working. Tr. 27-30. In May 2013, Plaintiff reported that his anxiety had been
4 under control for a long time. Tr. 680. Dr. Genthe observed Plaintiff's ADHD and
5 depression was moderately well managed with medication. Tr. 533. Plaintiff's
6 performance on memory tests administered by Dr. Genthe ranged from borderline
7 to low average, but Dr. Genthe opined that Plaintiff's ability to understand,
8 remember, and carry out short, simple instructions was good and that Plaintiff
9 could pursue work. Tr. 533-34. The ALJ gave Dr. Genthe's opinion significant
10 weight. Tr. 31. Dr. Cools testified that Plaintiff would have only moderate
11 limitations in attention, concentration, persistence, and pace, and that pace was the
12 main limiting factor. Tr. 700. Dr. Cools opined Plaintiff was capable of
13 performing simple, routine, repetitive tasks without strict production standards. Tr.
14 700-01. The ALJ gave Dr. Cools' opinion significant weight. Tr. 31. Dr. Beaty
15 reviewed the record and similarly opined that Plaintiff had moderate limitations in
16 maintaining concentration, persistence, and pace, and concluded that Plaintiff was
17 capable of performing simple, routine, repetitive tasks. Tr. 548, 552. The ALJ
18 gave this opinion some weight. Tr. 32. Plaintiff does not challenge the ALJ's
19 evaluation of the medical opinion evidence. ECF No. 20 at 10-18. Thus,
20 challenge to that evidence is waived. See *Carmickle v. Comm'r, Soc. Sec. Admin.*,

1 533 F.3d 1155, 1161 n.2 (9th Cir. 2008) (determining Court may decline to address
2 on the merits issues not argued with specificity); *Kim v. Kang*, 154 F.3d 996, 1000
3 (9th Cir. 1998) (the Court may not consider on appeal issues not “specifically and
4 distinctly argued” in the party’s opening brief). The ALJ reasonably concluded,
5 based on this record, that Plaintiff’s allegations of complete disability were not
6 supported by the medical evidence. This finding is supported by substantial
7 evidence.

8 2. Daily Activities

9 The ALJ found Plaintiff’s symptom complaints were inconsistent with
10 Plaintiff’s activities. Tr. 30-31. A claimant’s reported daily activities can form the
11 basis for an adverse credibility determination if they consist of activities that
12 contradict the claimant’s “other testimony” or if those activities are transferable to
13 a work setting. *Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007); see also *Fair*,
14 885 F.2d at 603 (daily activities may be grounds for an adverse credibility finding
15 “if a claimant is able to spend a substantial part of his day engaged in pursuits
16 involving the performance of physical functions that are transferable to a work
17 setting.”). “While a claimant need not vegetate in a dark room in order to be
18 eligible for benefits, the ALJ may discredit a claimant’s testimony when the
19 claimant reports participation in everyday activities indicating capacities that are
20 transferable to a work setting” or when activities “contradict claims of a totally

1 debilitating impairment.” *Molina*, 674 F.3d at 1112-13 (internal quotation marks
2 and citations omitted).

3 Here, Plaintiff testified that he could not work due to depression, feeling
4 overwhelmed and hopeless, anxiety, and difficulty with memory. Tr. 30; see Tr.
5 705-09. However, the ALJ noted that Plaintiff had no limitations in his daily
6 activities. Tr. 28-29, 30-31. Plaintiff reported no limitations in self care and
7 reported being able to prepare meals, performing household chores, getting around
8 by walking or using public transportation, and shopping. Tr. 275-77. Plaintiff
9 reported working out and watching television every day. Tr. 278. Plaintiff also
10 reported spending time with friends, playing soccer, taking walks, playing video
11 games, and attending church. Tr. 278, 526. Plaintiff lost nearly 100 pounds
12 through exercise. Tr. 696. Plaintiff transferred from a therapeutic behavior and
13 academic program to enrollment in high school with behavior support. See Tr.
14 242, 318. Plaintiff did not graduate but he obtained his GED. Tr. 702. Plaintiff
15 worked part-time as an independent kitchen knife salesman, which involved
16 scheduling and attending customer demonstration appointments and attending
17 weekly team meetings. Tr. 39, 62. Plaintiff reported that he had no problems
18 going to the call center or participating in meetings. Tr. 69.

19 Plaintiff faults the ALJ for relying on certain daily activities, such as
20 shopping, traveling, or walking, as evidence of daily activities that contradict

1 complete disability. ECF No. 20 at 12-13 (citing *Vertigan v. Halter*, 260 F.3d
2 1044, 1049-50 (9th Cir. 2001)). Unlike *Vertigan*, the ALJ did not rely on select
3 activities comprising a small portion of Plaintiff's day as evidence of nondisability.
4 *Vertigan*, 260 F.3d at 1049-50. Rather, the ALJ considered Plaintiff's daily
5 activities in the context of Plaintiff's entire day, which included attending school or
6 working part-time, followed by household chores, physical exercise, and social and
7 leisure activities. Tr. 30-31. The ALJ reasonably concluded that the totality of
8 Plaintiff's daily activities was inconsistent with Plaintiff's allegation that he was
9 completely unable to work due to depression, anxiety, and memory limitations. Tr.
10 31.

11 Plaintiff further challenges the ALJ's conclusion by identifying evidence of
12 Plaintiff's poor academic performance that Plaintiff alleges shows Plaintiff was
13 more limited than the ALJ concluded. ECF No. 20 at 12-14. However, even
14 where evidence is subject to more than one rational interpretation, the ALJ's
15 conclusion will be upheld. *Burch*, 400 F.3d at 679. The Court will only disturb
16 the ALJ's findings if they are not supported by substantial evidence. *Hill*, 698 F.3d
17 at 1158. Here, the ALJ reasonably concluded that the totality of the activities in
18 which Plaintiff participated in the course of a day was inconsistent with Plaintiff's
19 allegations of concentration, memory, persistence, or pace so limited as to preclude
20 all work. Tr. 31. This finding is supported by substantial evidence.

1 3. Failure to Follow Treatment Recommendations

2 The ALJ found Plaintiff's symptom complaints were inconsistent with
3 Plaintiff's failure to comply with treatment recommendations. Tr. 31.
4 Unexplained, or inadequately explained, failure to seek treatment or follow a
5 prescribed course of treatment may be the basis for an adverse credibility finding
6 unless there is a showing of a good reason for the failure. Orn, 495 F.3d at 638.
7 Plaintiff testified that he only took medication whenever he wanted to, because it
8 sometimes made him feel high and because he only took it when he thought he
9 needed it. Tr. 704. The ALJ concluded that Plaintiff's symptoms were less severe
10 than alleged because they did not motivate Plaintiff to take his medication as
11 prescribed. Tr. 31.

12 Plaintiff argues the ALJ improperly discredited Plaintiff's testimony for
13 discontinuing a medication due to its side effects. ECF No. 20 at 14. However,
14 where evidence is subject to more than one rational interpretation, the ALJ's
15 conclusion will be upheld. Burch, 400 F.3d at 679. The Court will only disturb
16 the ALJ's findings if they are not supported by substantial evidence. Hill, 698 F.3d
17 at 1158. Here, Plaintiff's testimony is subject to more than one rational
18 interpretation, and the ALJ reasonably concluded that Plaintiff's statement that he
19 only took medication when he thought he needed it indicated that Plaintiff's
20 symptoms were less severe than alleged. Tr. 31. This interpretation of Plaintiff's

1 testimony is further supported by other evidence in the record that Plaintiff
2 reported that his medication was effective and did not complain of side effects.
3 See Tr. 525 (Plaintiff reported that Xanax “helps [him] feel calm, not feel stressed
4 or overwhelmed”); Tr. 562 (Dr. Zimmerman offered to change Plaintiff’s
5 medication from Wellbutrin to something else and Plaintiff “seemed somewhat
6 surprised and said that he thought that he was actually feeling pretty good with this
7 medicine and that he thought he was handling it okay and did not want to change
8 it”). The ALJ’s conclusion is supported by substantial evidence.

9 The ALJ articulated clear and convincing reasons, supported by substantial
10 evidence, to support her finding that Plaintiff’s symptom complaints were less than
11 credible.

12 **B. Lay Opinion Evidence**

13 Plaintiff challenges the ALJ’s evaluation of lay opinion evidence from
14 Plaintiff’s teacher, Niki Swanson. ECF No. 20 at 15-16.

15 An ALJ must consider the statement of lay witnesses in determining whether
16 a claimant is disabled. *Stout v. Comm’r, Soc. Sec. Admin.*, 454 F.3d 1050, 1053
17 (9th Cir. 2006). Lay witness evidence cannot establish the existence of medically
18 determinable impairments, but lay witness evidence is “competent evidence” as to
19 “how an impairment affects [a claimant's] ability to work.” *Id.*; 20 C.F.R. §
20 416.913; see also *Dodrill v. Shalala*, 12 F.3d 915, 918-19 (9th Cir. 1993)

1 (“[F]riends and family members in a position to observe a claimant’s symptoms
2 and daily activities are competent to testify as to her condition.”). If a lay witness
3 statement is rejected, the ALJ ““must give reasons that are germane to each
4 witness.”” *Nguyen v. Chater*, 100 F.3d 1462, 1467 (9th Cir. 1996) (citing *Dodrill*,
5 12 F.3d at 919).

6 Ms. Swanson completed a teacher questionnaire on October 26, 2012, and
7 opined that Plaintiff had serious problems expressing his ideas in written form,
8 completing class/homework assignments, and making and keeping friends, and that
9 Plaintiff needed extra time to complete assignments and a very structured
10 environment. Tr. 282-89. The ALJ gave this opinion “some weight” and noted
11 that it was “fairly consistent” with Plaintiff’s RFC. Tr. 32.

12 The ALJ gave Ms. Swanson’s opinion less than full weight because she had
13 worked with Plaintiff for only two months at the time of her report and only had a
14 “snapshot of his abilities and limitations.” Tr. 32. An ALJ is permitted to consider
15 the length and nature of a relationship in evaluating the opinions of “other
16 sources.” SSR 06-03P, available at 2006 WL 2329939 at *4 (Aug. 9, 2006), see
17 20 C.F.R. § 416.927(c) (2012). The ALJ reasonably concluded that Ms.
18 Swanson’s opinion was due less weight because she had only worked with Plaintiff
19 for two months of the school year. Tr. 32. Plaintiff challenges the ALJ’s findings
20 on the grounds that Ms. Swanson spent more time with Plaintiff than any of the

1 medical sources in the record, whose opinions the ALJ afforded greater weight.
2 ECF No. 20 at 16. Plaintiff's comparison of the amount of time Ms. Swanson
3 spent with Plaintiff to the amount of time the medical sources spent with Plaintiff
4 is inapposite, as Ms. Swanson is an "other source" and not due the same amount of
5 deference as acceptable medical sources. SSR 06-03P, 2006 WL 2329939, at *5.
6 That Ms. Swanson had only worked with Plaintiff for two months out of the school
7 year was a germane reason to give Ms. Swanson's opinion less weight.

8 Even if the ALJ did not identify a germane reason to give Ms. Swanson's
9 opinion less than full weight, the ALJ did not err in evaluating her opinion. An
10 ALJ need not provide reasons for rejecting an opinion where the ALJ incorporated
11 it into the RFC. See *Turner v. Comm'r, Soc. Sec. Admin.*, 613 F.3d 1217, 1223
12 (9th Cir. 2010). Ms. Swanson opined that Plaintiff had serious problems
13 expressing his ideas in written form, completing class/homework assignments, and
14 making and keeping friends, and that Plaintiff needed extra time to complete
15 assignments and a very structured environment. Tr. 282-89. The ALJ
16 incorporated these limitations into the RFC by limiting Plaintiff to simple, routine,
17 repetitive tasks and instructions with no production pace of work, no interaction
18 with the general public, and only brief occasional interaction with coworkers and
19 supervisors. Tr. 29.

1 Plaintiff asserts that the RFC should have included limitations for
2 absenteeism based on Ms. Swanson’s report. ECF No. 20 at 17-18. “[T]he ALJ is
3 responsible for translating and incorporating clinical findings into a succinct RFC.”
4 *Rounds v. Comm’r Soc. Sec. Admin.*, 807 F.3d 996, 1006 (9th Cir. 2015).
5 However, the ALJ is not required to provide a robust discussion of every piece of
6 evidence. See, e.g., *Howard ex rel. Wolff v. Barnhart*, 341 F.3d 1006, 1012 (9th
7 Cir. 2003) (stating that “in interpreting the evidence and developing the record, the
8 ALJ does not need to discuss every piece of evidence” (quotation marks omitted)).
9 Ms. Swanson’s report noted that Plaintiff frequently missed school due to illness.
10 Tr. 288. This was not an opinion regarding Plaintiff’s functional limitations, and it
11 is not clear that the “illness” identified in the report is associated with any of
12 Plaintiff’s severe impairments. *Id.* Because no source opined any functional
13 limitations related to absenteeism, the ALJ was not required to give reasons for
14 failing to incorporate an absenteeism limitation into Plaintiff’s RFC.¹ The ALJ did
15 not err in evaluating the lay opinion evidence.

18 ¹ The same reasoning applies to Plaintiff’s assertion that the ALJ should have
19 incorporated limits for time spent off task and a need for redirection, which
20 Plaintiff infers is a necessary functional limitation based on factual observations

1 **C. Step Five**

2 Plaintiff challenges the ALJ's conclusion at step five that Plaintiff could
3 perform other work in the national economy. ECF No. 20 at 17-18. At step five,
4 the Commissioner considers whether, in view of the claimant's RFC, the claimant
5 is capable of performing other work in the national economy. 20 C.F.R. §
6 416.920(a)(4)(v). Here, Plaintiff's argument is based entirely on the assumption
7 that the RFC was incomplete because the ALJ erred in evaluating Plaintiff's
8 symptom claims and the lay opinion evidence. ECF No. 20 at 17-18. For reasons
9 discussed throughout this decision, the ALJ's evaluation of Plaintiff's symptom
10 testimony and consideration of the lay opinion evidence are legally sufficient and
11 supported by substantial evidence. Therefore, the RFC was complete, and the ALJ
12 reasonably relied on the vocational expert's testimony to conclude that Plaintiff
13 was capable of performing other work in the national economy. The ALJ did not
14 err in this finding.

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20 Plaintiff identifies in the record, but which no source opined was a functional
limitation. ECF No. 20 at 17-18.

1 **CONCLUSION**

2 Having reviewed the record and the ALJ’s findings, this court concludes the
3 ALJ’s decision is supported by substantial evidence and free of harmful legal error.

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

- 5 1. Plaintiff’s Motion for Summary Judgment, ECF No. 20, is **DENIED**.
6 2. Defendant’s Motion for Summary Judgment, ECF No. 21, is **GRANTED**.
7 3. The Court enter **JUDGMENT** in favor of Defendant.

8 The District Court Executive is directed to file this Order, provide copies to
9 counsel, and **CLOSE THE FILE**.

10 DATED December 17, 2018.

11 s/Mary K. Dimke
12 MARY K. DIMKE
13 UNITED STATES MAGISTRATE JUDGE
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