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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

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Billy W. Martin,

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No. CV 11-00459-PHX-NVW

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Plaintiff,

)

**ORDER**

11

vs.

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Michael J. Astrue, Commissioner of  
Social Security,

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Defendant.

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Billy W. Martin seeks review under 42 U.S.C. §§ 405(g), 1383(c)(3), of the final decision of the Commissioner of Social Security (“the Commissioner”), which denied him disability insurance benefits and supplemental security income under the Social Security Act. Because the decision of the Administrative Law Judge (“ALJ”) is supported by substantial evidence and is not based on legal error, the Commissioner’s decision will be affirmed.

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**I. Background**

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**A. Factual Background**

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Martin was born on March 20, 1971. He was 29 years old on July 1, 2000, the alleged disability onset date, and 38 years old on the date of the ALJ’s decision. He has a high school education (G.E.D.) and is able to communicate in English. He does not have

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1 a history of past relevant work. Martin has been diagnosed with major depressive  
2 disorder and bipolar disorder.

3 Martin testified that he had difficulty associating with people when he was young  
4 because his father moved at least once a year, sometimes two or three times a year. When  
5 he was 18 or 19 years old, he quit living with his father and lived independently for  
6 awhile. When he was 20 years old, he developed mental problems, quit socializing, and  
7 moved in with his mother. He has lived with his mother ever since. He no longer has a  
8 drivers license, so she drives him to go grocery shopping and to medical appointments.  
9 His mother reminds him to take his medications. He receives medical care through the  
10 Arizona Health Care Cost Containment System.

11 Martin reports that he spends most days in his room, watching television with the  
12 two family dogs. He goes outside to smoke every two or three hours. If he needs to go  
13 somewhere, he will take a shower, but otherwise bathing seems like too much trouble.  
14 He has difficulty sleeping without medication, but when he takes sleep medication, he  
15 usually sleeps almost 12 hours.

16 Martin does his own grocery shopping because he has food stamps. In 2009, he  
17 testified that he does not help his mother with any of the cooking, housework, or yard  
18 work. In 2008, both Martin and his mother reported that about three times a week he  
19 would make sandwiches or simple meals and would take out the trash about once a week.

20 Martin testified that he does not currently drink alcohol or use drugs. He said that  
21 when he was in his mid-twenties he drank excessively and used methamphetamine.

22 When asked why he has not worked much in the past 20 years, Martin said he was  
23 doing construction work and his knee buckled a couple of times, so he became afraid of  
24 heights and could no longer do construction work. He also said he forgets things  
25 constantly and would “mess up” on the job because of forgetfulness. He also reported  
26 panic attacks and depression.

1           **B.     Procedural History**

2           On July 5, 2007, Martin applied for disability insurance benefits and supplemental  
3 security income, alleging disability beginning July 1, 2000. The application was denied  
4 on initial review and again on reconsideration, after which Martin requested that his claim  
5 be heard by an ALJ. On August 13, 2009, an administrative hearing was held at which  
6 Martin testified and was represented by counsel. George J. Bluth, an impartial vocational  
7 expert, also appeared at the hearing. On November 6, 2009, the ALJ issued her decision  
8 that Martin was not disabled within the meaning of the Social Security Act.

9           On January 8, 2011, the Appeals Council denied Martin’s request for review of the  
10 ALJ’s unfavorable decision, making that decision the final decision of the Commissioner.  
11 On March 9, 2011, Martin sought judicial review of the decision pursuant to 42 U.S.C.  
12 §§ 405(g), 1383(c)(3).

13           **II.     Standard of Review**

14           The district court reviews only those issues raised by the party challenging the  
15 ALJ’s decision.<sup>1</sup> *See Lewis v. Apfel*, 236 F.3d 503, 517 n.13 (9<sup>th</sup> Cir. 2001). The court  
16 may set aside the Commissioner’s disability determination only if the determination is not  
17 supported by substantial evidence or is based on legal error. *Orn v. Astrue*, 495 F.3d 625,  
18 630 (9<sup>th</sup> Cir. 2007). Substantial evidence is more than a scintilla, less than a  
19 preponderance, and relevant evidence that a reasonable person might accept as adequate  
20 to support a conclusion considering the record as a whole. *Id.* In determining whether  
21 substantial evidence supports a decision, the court must consider the record as a whole  
22 and may not affirm simply by isolating a “specific quantum of supporting evidence.” *Id.*

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25           <sup>1</sup>The Court does not review issues raised only in a reply brief. Here, Martin raises for  
26 the first time in his reply brief contentions that the residual functional capacity assessment  
27 is deficient because it does not say how long it would take Martin to learn how to perform  
28 his job or whether Martin has any limitation in his ability to deal with coworkers and  
supervisors.

1 As a general rule, “[w]here the evidence is susceptible to more than one rational  
2 interpretation, one of which supports the ALJ’s decision, the ALJ’s conclusion must be  
3 upheld.” *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002) (citations omitted).

4 The ALJ is responsible for resolving conflicts in medical testimony, determining  
5 credibility, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9<sup>th</sup> Cir.  
6 1995). In reviewing the ALJ’s reasoning, the court is “not deprived of [its] faculties for  
7 drawing specific and legitimate inferences from the ALJ’s opinion.” *Magallanes v.*  
8 *Bowen*, 881 F.2d 747, 755 (9th Cir. 1989).

### 9 **III. Five-Step Sequential Evaluation Process**

10 To determine whether a claimant is disabled for purposes of the Social Security  
11 Act, the ALJ follows a five-step process. 20 C.F.R. § 404.1520(a). If the ALJ determines  
12 that the claimant is disabled or not disabled at any step, the ALJ does not continue to the  
13 next step. The claimant bears the burden of proof on the first four steps, but at step five,  
14 the burden shifts to the Commissioner. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir.  
15 1999).

16 At the first step, the ALJ determines whether the claimant is engaging in  
17 substantial gainful activity. 20 C.F.R. § 404.1520(a)(4)(I). If so, the claimant is not  
18 disabled and the inquiry ends. *Id.* At the step two, the ALJ determines whether the  
19 claimant has a “severe” medically determinable physical or mental impairment.  
20 § 404.1520(a)(4)(ii). If not, the claimant is not disabled and the inquiry ends. *Id.* At step  
21 three, the ALJ considers whether the claimant’s impairment or combination of  
22 impairments meet or equal an impairment listed in Appendix 1 to Subpart P of 20 C.F.R.  
23 Pt. 404. § 404.1520(a)(4)(iii). If so, the claimant is automatically found to be disabled.  
24 *Id.* If not, the ALJ proceeds to step four. At step four, the ALJ assesses the claimant’s  
25 residual functional capacity and determines whether the claimant is still capable of  
26 performing past relevant work. § 404.1520(a)(4)(iv). If so, the claimant is not disabled  
27 and the inquiry ends. *Id.* If not, the ALJ proceeds to the fifth and final step, where he  
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1 determines whether the claimant can perform any other work based on the claimant's  
2 residual functional capacity, age, education, and work experience. § 404.1520(a)(4)(v).  
3 If so, the claimant is not disabled. *Id.* If not, the claimant is disabled. *Id.*

#### 4 **IV. Analysis**

5 At step one, the ALJ found that Martin has not engaged in substantial gainful  
6 activity since July 1, 2000, the alleged onset date of disability. The ALJ also found that  
7 Martin had acquired sufficient quarters of coverage to remain insured through June 20,  
8 2007, but Martin believes the date last insured is June 30, 2001. At step two, the ALJ  
9 found that Martin had the following severe impairment: bipolar disorder. At step three,  
10 the ALJ found that Martin did not have an impairment or combination of impairments  
11 that met or medically equaled one of the listed impairments in 20 C.F.R. Part 404,  
12 Subpart P, Appendix 1. Martin does not raise any issues related to the ALJ's  
13 determinations at the first three steps of the five-step sequential evaluation process.

14 The ALJ determined that Martin:

15 has the residual functional capacity to perform a range of work at all  
16 exertional levels but with the following nonexertional limitations: he can  
17 perform simple, unskilled work with minimal contact with the general  
public, and he is able to work independently once he learns how to perform  
his job.

18 At step four, the ALJ determined that Martin does not have any past relevant work and  
19 therefore is unable to perform past relevant work. At step five, the ALJ concluded that,  
20 considering Martin's age, education, work experience, and residual functional capacity,  
21 there are jobs that exist in significant numbers in the national economy that Martin could  
22 perform.

#### 23 **A. Weighing Medical Source Evidence**

##### 24 **1. Legal Standard**

25 In weighing medical source opinions in Social Security cases, the Ninth Circuit  
26 distinguishes among three types of physicians: (1) treating physicians, who actually treat  
27 the claimant; (2) examining physicians, who examine but do not treat the claimant; and  
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1 (3) non-examining physicians, who neither treat nor examine the claimant. *Lester v.*  
2 *Chater*, 81 F.3d 821, 830 (9<sup>th</sup> Cir. 1995). Generally, more weight should be given to the  
3 opinion of a treating physician than to the opinions of non-treating physicians. *Id.* A  
4 treating physician’s opinion is afforded great weight because such physicians are  
5 “employed to cure and [have] a greater opportunity to observe and know the patient as an  
6 individual.” *Sprague v. Bowen*, 812 F.2d 1226, 1230 (9<sup>th</sup> Cir. 1987). Where a treating  
7 physician’s opinion is not contradicted by another physician, it may be rejected only for  
8 “clear and convincing” reasons, and where it is contradicted, it may not be rejected  
9 without “specific and legitimate reasons” supported by substantial evidence in the record.  
10 *Lester*, 81 F.3d at 830. Moreover, the Commissioner must give weight to the treating  
11 physician’s subjective judgments in addition to his clinical findings and interpretation of  
12 test results. *Id.* at 832-33.

13 Further, an examining physician’s opinion generally must be given greater weight  
14 than that of a non-examining physician. *Id.* at 830. As with a treating physician, there  
15 must be clear and convincing reasons for rejecting the uncontradicted opinion of an  
16 examining physician, and specific and legitimate reasons, supported by substantial  
17 evidence in the record, for rejecting an examining physician’s contradicted opinion. *Id.* at  
18 830-31.

19 The opinion of a non-examining physician is not itself substantial evidence that  
20 justifies the rejection of the opinion of either a treating physician or an examining  
21 physician. *Id.* at 831. “The opinions of non-treating or non-examining physicians may  
22 also serve as substantial evidence when the opinions are consistent with independent  
23 clinical findings or other evidence in the record.” *Thomas*, 278 F.3d at 957. Factors that  
24 an ALJ may consider when evaluating any medical opinion include “the amount of  
25 relevant evidence that supports the opinion and the quality of the explanation provided;  
26 the consistency of the medical opinion with the record as a whole; [and] the specialty of  
27 the physician providing the opinion.” *Orn*, 495 F.3d at 631.

1           Moreover, Social Security Rules expressly require a treating source’s opinion on  
2 an issue of a claimant’s impairment be given controlling weight if it is well-supported by  
3 medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent  
4 with the other substantial evidence in the record. 20 C.F.R. § 404.1527(d)(2). If a  
5 treating source’s opinion is not given controlling weight, the weight that it will be given is  
6 determined by length of the treatment relationship, frequency of examination, nature and  
7 extent of the treatment relationship, relevant evidence supporting the opinion, consistency  
8 with the record as a whole, the source’s specialization, and other factors. *Id.*

9           Finding that a treating physician’s opinion is not entitled to controlling weight  
10 does not mean that the opinion should be rejected:

11                     [A] finding that a treating source medical opinion is not well-  
12 supported by medically acceptable clinical and laboratory diagnostic  
13 techniques or is inconsistent with the other substantial evidence in the case  
14 record means only that the opinion is not entitled to “controlling weight,”  
15 not that the opinion should be rejected. Treating source medical opinions  
are still entitled to deference and must be weighed using all of the factors  
provided in 20 C.F.R. §404.1527. . . . In many cases, a treating source’s  
medical opinion will be entitled to the greatest weight and should be  
adopted, even if it does not meet the test for controlling weight.

16 *Orn*, 495 F.3d at 631-32 (quoting Social Security Ruling 96-2p). Where there is a  
17 conflict between the opinion of a treating physician and an examining physician, the ALJ  
18 may not reject the opinion of the treating physician without setting forth specific,  
19 legitimate reasons supported by substantial evidence in the record. *Id.* at 632.

20                     **2. The ALJ Did Not Err in Weighing Medical Source Opinion**  
21                     **Evidence.**

22           Martin contends the ALJ erred by giving greater weight to the opinion of the non-  
23 examining physician Randall Garland, Ph.D., than to the opinions of treating psychiatrist  
24 Leela Reddy, M.D., treating nurse practitioner Judy Yurgel, and examining state agency  
25 consultative physician Joanne Smart, Ph.D. The ALJ gave “substantial weight” to the  
26 opinion of Dr. Garland, the state agency psychologist, who completed both a mental  
27 residual functional capacity and the psychiatric review technique form. The ALJ agreed  
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1 that the evidence supported Dr. Garland's mental residual functional capacity assessment,  
2 but only gave "some consideration" to Dr. Garland's conclusions with respect to the  
3 psychiatric review technique form. The ALJ assigned "little weight" to the opinions of  
4 Dr. Reddy, NP Yurgel, and Dr. Smart.

5 Dr. Reddy's July 2002 psychiatric evaluation states that Martin first sought  
6 treatment in 2001, at which time his primary care physician prescribed Wellbutrin. After  
7 three weeks, Martin discontinued taking Wellbutrin because he did not see any benefits.  
8 His primary care physician then prescribed Paxil, which Martin discontinued after three  
9 weeks because he felt too tired. He reported being unable to work because of a knee  
10 problem as a result of a high school football injury. Dr. Reddy observed that his "thought  
11 processes were logical and goal directed without any evidence of looseness of association  
12 or flight of ideas," but his "cognition and concentration was significantly impaired." She  
13 assessed his intellectual functioning as average, his abstract ability as intact, and his  
14 insight and judgment as fair. Dr. Reddy prescribed Zoloft and said "we will monitor  
15 cautiously for compliance." In March 2003, Martin was discharged from Dr. Reddy's  
16 care for failing to follow through with treatment, keep appointments, and respond to  
17 appropriate notice.

18 In September 2008 and July 2009, NP Yurgel completed medical assessments of  
19 Martin's ability to perform work-related activities. In both assessments she evaluated  
20 Martin's degree of restriction of daily activities as severe; his limitation in understanding,  
21 carrying out, and remembering instructions as moderately severe; and his limitation in  
22 performing simple, repetitive, or varied tasks as moderately severe. In 2008 NP Yurgel  
23 wrote that a psychological evaluation had not been obtained at her agency because the  
24 diagnosis of a schizoaffective disorder was clear, he had been ill for at least 15 years, and  
25 the same level of severity had existed for five years. In 2009 she wrote that a psychiatric  
26 evaluation had been done several years before and that the restrictions she assessed were  
27 in existence since 1999.



1 In June 2008, state agency consultative physician Dr. Smart assessed Martin based  
2 on a clinical interview, Mini Mental Status Exam results, and a review of records. She  
3 noted, "He reported that he is doing better since he has been on medications," was able to  
4 get his hair cut, and was bathing weekly now. She also noted, "His mother said he is  
5 showing some emotion now, which he attributed to the medication he is taking." He  
6 reported to Dr. Smart that his worst problem was his difficulty being around people. Dr.  
7 Smart said this "suggests the possibility, given his other symptoms, of Schizoid  
8 Personality Disorder." She concluded Martin "is severely depressed, but his depression  
9 appears to be lifting somewhat." Dr. Smart assessed Martin as likely to have a slight  
10 impairment in work situations because of his long-term memory problems, no significant  
11 short-term memory problems, and little problem with understanding. She assessed him as  
12 likely to have moderate impairment maintaining concentration and focus and completing  
13 tasks or normal workday schedules. She further opined that he is likely to have moderate  
14 impairment in social interaction, which sometimes may be marked, and he is likely to  
15 have moderate to marked difficulty adapting to changes needed to maintain employment.

16 In July 2008, Dr. Garland reviewed Martin's medical record as of the alleged onset  
17 date of disability, July 1, 2000, but noted that there was insufficient evidence regarding  
18 July 1, 2000, to June 30, 2001. Dr. Garland made specific comments regarding the  
19 treatment notes and evaluations by other medical sources. Dr. Garland assessed Martin's  
20 functional limitations as moderate in restriction of daily living activities, difficulties  
21 maintaining social functioning, and difficulties in maintaining concentration, persistence,  
22 or pace. He concluded that Martin:

23 is able to meet the basic mental demands of competitive, remunerative,  
24 unskilled work on a sustained basis, particularly in settings of low social  
contact, including the abilities to:

- 25 1. Understand, carry out, and remember simple instructions.
- 26 2. Make judgments commensurate with the functions of unskilled work,  
27 i.e., simple work-related decisions.





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**2. The ALJ Did Not Err by Finding Martin’s Subjective Symptom Testimony Not Fully Credible.**

Martin contends that the ALJ erred by failing to set forth specific, clear, and convincing reasons to reject his testimony about the severity of his subjective symptoms. However, the administrative hearing decision states:

After careful consideration of the evidence, the undersigned finds that the claimant’s medically determinable impairment could reasonably be expected to cause the alleged symptoms; however, the claimant’s statements concerning the intensity, persistence and limiting effects of these symptoms are not credited to the extent they are inconsistent with the above residual functional capacity assessment.

The overall evidence does not support the severity of his symptoms and work-related limitations. First, the claimant has neither consistently sought treatment for his impairments nor complied with his plan of care. . . .

In response to his record of noncompliance, the claimant testified that he relied on his mother to remind him about his medication and that he had been waiting to receive a new appointment date. This merely indicates that he abdicates responsibility for following through with his treatment. Moreover, his symptoms are evidently not as severe as alleged because he has had periods of no treatment from January 2000 to July 2002, November 2003 to June 2005, and January 2006 to October 2007.

Second, when the claimant did receive treatment, the record shows that his symptoms improved. . . .

Third, the claimant’s ability to work is further illustrated by his own testimony. At the hearing, he did not indicate any specific work-related limitations. Although he alleged the inability to associate with other people and issues of anger management, he is able to go shopping and rely on his mother for help. The record shows that, when compliant, he has been able to control his symptoms with treatment, and he does not suffer from significant adverse side effects from the medication.

The reasons stated for finding Martin’s testimony about the severity of his symptoms are sufficiently specific, clear, and convincing.

**C. Third-Party Reports**

Martin contends the ALJ erred by rejecting lay witness testimony without providing specific reasons relevant to each witness and supported by substantial evidence. The ALJ’s hearing decision does not explicitly mention the third-party function report completed by Martin’s mother dated May 27, 2008, and did not implicitly reject it. The


1 report is not only consistent with, but almost duplicates, Martin's May 27, 2008 self  
2 report. In fact, the record shows that, at times, Martin's mother completed documents for  
3 Martin and participated in his interviews with examining sources. Her "third-party"  
4 report does not add any new information to be given or denied weight.

5 IT IS THEREFORE ORDERED affirming the final decision of the Commissioner  
6 of Social Security denying Billy W. Martin disability benefits.

7 IT IS FURTHER ORDERED that the Clerk enter judgment in favor of Defendant  
8 against Plaintiff and that Plaintiff take nothing. The Clerk shall terminate this action.

9 DATED this 17<sup>th</sup> day of February, 2012.

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Neil V. Wake  
United States District Judge