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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Thomas Jay Corniea,

10 Plaintiff,

11 v.

12 Carolyn W. Colvin,

13 Defendant.
14

No. CV-14-01199-PHX-DGC

ORDER

15 Plaintiff Thomas Corniea seeks review under 42 U.S.C. § 405(g) of the final
16 decision of the Commissioner of Social Security (“the Commissioner”), which denied his
17 disability insurance benefits and supplemental security income under sections 216(i),
18 223(d), and 1614(a)(3)(A) of the Social Security Act. Because the decision of the
19 Administrative Law Judge (“ALJ”) is supported by substantial evidence and is not based
20 on legal error, the Commissioner’s decision will be affirmed.

21 **I. Background.**

22 Plaintiff was born on October 25, 1954. He has previously worked as a
23 maintenance worker, bartender, and telemarketer. Since the alleged onset of Plaintiff’s
24 disability in 2009, Plaintiff has suffered a variety of impairments. He claims to suffer
25 from a severe depression as well as an anxiety or panic disorder. These psychological
26 problems, he claims, prevent him from working and force him to spend time alone. In
27 May of 2010, Plaintiff was admitted to the hospital on account of depression, anxiety,
28 and suicidal thoughts. Plaintiff also suffers pain in his back, knees, and shoulders. He

1 has undergone two surgeries for his right shoulder and a surgery for his right knee.
2 Plaintiff also claims to suffer from chronic obstructive pulmonary disease, fatigue, and
3 insomnia.

4 On July 15, 2009, Plaintiff applied for disability insurance benefits and
5 supplemental security income. Plaintiff claimed that his disability began on October 5,
6 2006, but later amended this date to June 23, 2009. A.R. 27, 949. After an initial
7 hearing, a decision denying benefits, and a remand from the Appeals Council, Plaintiff
8 appeared with his attorney at a second hearing before the ALJ on July 23, 2013.
9 A.R. 962. On August 29, 2013, the ALJ decided that Plaintiff was not disabled within
10 the meaning of the Social Security Act. A.R. 27. The Appeals Council denied Plaintiff's
11 request for review, making the ALJ's decision the Commissioner's final decision.

12 **II. Legal Standard.**

13 The district court reviews only those issues raised by the party challenging the
14 ALJ's decision. *See Lewis v. Apfel*, 236 F.3d 503, 517 n.13 (9th Cir. 2001). The court
15 may set aside the Commissioner's disability determination only if the determination is
16 not supported by substantial evidence or is based on legal error. *Orn v. Astrue*, 495 F.3d
17 625, 630 (9th Cir. 2007). Substantial evidence is more than a scintilla, less than a
18 preponderance, and relevant evidence that a reasonable person might accept as adequate
19 to support a conclusion considering the record as a whole. *Id.* In determining whether
20 substantial evidence supports a decision, the court must consider the record as a whole
21 and may not affirm simply by isolating a "specific quantum of supporting evidence." *Id.*
22 As a general rule, "[w]here the evidence is susceptible to more than one rational
23 interpretation, one of which supports the ALJ's decision, the ALJ's conclusion must be
24 upheld." *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002) (citations omitted).

25 **III. The ALJ's Five-Step Evaluation Process.**

26 To determine whether a claimant is disabled for purposes of the Social Security
27 Act, the ALJ follows a five-step process. 20 C.F.R. § 404.1520(a). The claimant bears
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1 the burden of proof on the first four steps, but at step five, the burden shifts to the
2 Commissioner. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999).

3 At the first step, the ALJ determines whether the claimant is engaging in
4 substantial gainful activity. 20 C.F.R. § 404.1520(a)(4)(i). If so, the claimant is not
5 disabled and the inquiry ends. *Id.* At step two, the ALJ determines whether the claimant
6 has a “severe” medically determinable physical or mental impairment.
7 § 404.1520(a)(4)(ii). If not, the claimant is not disabled and the inquiry ends. *Id.* At step
8 three, the ALJ considers whether the claimant’s impairment or combination of
9 impairments meets or medically equals an impairment listed in Appendix 1 to Subpart P
10 of 20 C.F.R. Pt. 404. § 404.1520(a)(4)(iii). If so, the claimant is automatically found to
11 be disabled. *Id.* If not, the ALJ proceeds to step four. At step four, the ALJ assesses the
12 claimant’s residual functional capacity (“RFC”) and determines whether the claimant is
13 still capable of performing past relevant work. § 404.1520(a)(4)(iv). If so, the claimant
14 is not disabled and the inquiry ends. *Id.* If not, the ALJ proceeds to the fifth and final
15 step, where he determines whether the claimant can perform any other work based on the
16 claimant’s RFC, age, education, and work experience. § 404.1520(a)(4)(v). If so, the
17 claimant is not disabled. *Id.* If not, the claimant is disabled. *Id.*

18 At step one, the ALJ found that Plaintiff meets the insured status requirements of
19 the Social Security Act through December 31, 2010, and that he has not engaged in
20 substantial gainful activity since October 5, 2006. At step two, the ALJ found that
21 Plaintiff has the following severe impairments: major depressive disorder; generalized
22 anxiety and panic disorder; pain from arthroscopic surgeries to his right shoulder and
23 right knee; and reactive airway disease or chronic obstructive pulmonary disease
24 (“COPD”). At step three, the ALJ determined that Plaintiff does not have an impairment
25 or combination of impairments that meets or medically equals an impairment listed in
26 Appendix 1 to Subpart P of 20 C.F.R. Pt. 404. At step four, the ALJ found that Plaintiff
27 has the RFC to perform:
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1 [L]ight work as defined in 20 C.F.R. 404.1567(b) and 416.967(b) except
2 that he is limited to occasional overhead reaching with the upper right
3 extremity and should avoid concentrated exposure to hazardous moving
4 machinery and unprotected heights. He should also avoid concentrated
5 exposure to pulmonary irritants, including dust, fumes, odors, and gases.
6 Finally, he is limited to semi-skilled work.

7 A.R. 32. The ALJ further found that Plaintiff is able to perform his earlier work as a
8 telemarketer. For that reason, the ALJ concluded that Plaintiff is not disabled and did not
9 proceed to step five of the analysis.

10 **IV. Analysis.**

11 Plaintiff argues that the ALJ erred by improperly weighing the medical opinions of
12 three doctors, by discrediting Plaintiff's testimony about his pain and symptoms, and by
13 discrediting the statement of his girlfriend.

14 **A. Weighing of Medical Source Evidence.**

15 Plaintiff argues that the ALJ improperly weighed the medical opinions of the
16 following medical sources: Dr. Sharon Steingard, Dr. Ivan Filner, and Dr. Ali
17 Mojaverian.

18 **1. Legal Standard.**

19 The Ninth Circuit distinguishes between the opinions of treating physicians,
20 examining physicians, and non-examining physicians. *See Lester v. Chater*, 81 F.3d 821,
21 830 (9th Cir. 1995). Generally, an ALJ should give greatest weight to a treating
22 physician's opinion and more weight to the opinion of an examining physician than to
23 one of a non-examining physician. *See Andrews v. Shalala*, 53 F.3d 1035, 1040-41 (9th
24 Cir. 1995); *see also* 20 C.F.R. § 404.1527(c)(2)-(6) (listing factors to be considered when
25 evaluating opinion evidence, including length of examining or treating relationship,
26 frequency of examination, consistency with the record, and support from objective
27 evidence). If it is not contradicted by another doctor's opinion, the opinion of a treating
28 or examining physician can be rejected only for "clear and convincing" reasons. *Lester*,
81 F.3d at 830 (citing *Embrey v. Bowen*, 849 F.2d 418, 422 (9th Cir. 1988)). A
contradicted opinion of a treating or examining physician can be rejected for "specific

1 and legitimate reasons that are supported by substantial evidence in the record.” *Id.* at
2 830-31 (citing *Andrews*, 53 F.3d at 1043).

3 An ALJ can meet the “specific and legitimate reasons” standard “by setting out a
4 detailed and thorough summary of the facts and conflicting clinical evidence, stating his
5 interpretation thereof, and making findings.” *Cotton v. Bowen*, 799 F.2d 1403, 1408 (9th
6 Cir. 1986). But “[t]he ALJ must do more than offer his conclusions. He must set forth
7 his own interpretations and explain why they, rather than the doctors’, are correct.”
8 *Embrey*, 849 F.2d at 421-22. The Commissioner is responsible for determining whether a
9 claimant meets the statutory definition of disability and does not give significance to a
10 statement by a medical source that the claimant is “disabled” or “unable to work.” 20
11 C.F.R. § 416.927(d).

12 **2. Dr. Sharon Steingard, D.O.**

13 On May 17, 2010, Dr. Sharon Steingard, an examining but not treating
14 psychiatrist, interviewed Plaintiff. A.R. 343. She diagnosed Plaintiff as having major
15 depression with psychosis, panic disorder, and generalized anxiety disorder. A.R. 346.
16 She described Plaintiff as being “likely to give up on tasks that he finds stressful. Pace is
17 very slow for everything. Interaction is significantly impaired. He is very nervous and
18 anxious, to the point of experiencing some auditory hallucinations. . . . His ability to
19 adapt to the competitive workplace at this time is poor. . . . He would need a lot more
20 supervision and attention than the average employee.” A.R. 347. Dr. Steingard
21 concluded that Plaintiff’s impairments and symptoms limited his ability to work. *Id.*

22 The ALJ did not accept Dr. Steingard’s opinion because: (1) Dr. Steingard did not
23 review Plaintiff’s treatment records; (2) her specific findings are not consistent with her
24 conclusion; (3) her opinion is not consistent with the evidence in the record; and (4) her
25 opinion is contradicted by Dr. Julio Angulo. Because Dr. Steingard’s opinion was
26 contradicted by another physician, the ALJ needed only specific and legitimate reasons
27 for rejecting her opinion. *Lester*, 81 F.3d at 830-31.

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1 The ALJ did not err in rejecting Dr. Steingard’s opinion. The opinion was not
2 consistent with the evidence in the record and was contradicted by another physician. Dr.
3 Julio Angulo’s psychological assessment of Plaintiff is strikingly different from Dr.
4 Steingard’s. He examined Plaintiff on September 15, 2009, and concluded:

5 [W]hile [Plaintiff] does appear to experience anxiety and depression, his
6 cognitive mental ability at least [is] not impaired in any significant way. . . .
7 In all probability, if placed in a work situation, he might encounter issues of
8 persistence/adaptability secondary to anxiety occasionally but not all the
time. Overall, however, I do not see dysfunctions that might totally impede
ability to participate in the work force.

9 A.R. 267. Dr. Angulo rated Plaintiff’s understanding, concentration, social interaction,
10 and adaptation as mostly good and only occasionally fair. A.R. 268.

11 The ALJ pointed to several parts of the record that support Dr. Angulo’s opinion
12 and undermine Dr. Steingard’s. For example, recent reports state that Plaintiff has
13 experienced “some improvement in mood and anxiety symptoms” and that his panic
14 attacks are “mild.” A.R. 840, 909. Plaintiff’s global assessment of functioning (“GAF”)
15 score was assessed as 70, which indicates only mild or transitory limitations in social and
16 occupational functioning. A.R. 423, 825; *see Rollins v. Massanari*, 261 F.3d 853, 857
17 (9th Cir. 2001) (considering a GAF score as relevant evidence). Plaintiff himself testified
18 that he suffered panic attacks only once a week and usually at night, which suggests that
19 his anxiety is not as severe as Dr. Steingard found. A.R. 952, 966; *see also* A.R. 911
20 (noting that Plaintiff’s panic attacks occur “less often tha[n] in the past”). Finally, Dr.
21 Brady Dalton, a non-examining psychiatrist, also concluded that Plaintiff’s
22 understanding, concentration, social interaction, and adaptation were not significantly
23 limited by his psychological problems. A.R. 313; *see also Thomas*, 278 F.3d at 957
24 (“The opinions of non-treating or non-examining physicians may also serve as substantial
25 evidence when the opinions are consistent with independent clinical findings or other
26 evidence in the record.”).¹

27
28 ¹ Plaintiff argues that the ALJ’s finding that Plaintiff is capable of “semi-skilled
work” is not consistent with the opinions of Dr. Angulo and Dr. Dalton. The Court
disagrees. Dr. Angulo found that Plaintiff’s mental abilities were mostly good and only

1 The medical opinions finding that Plaintiff’s psychological problems are not
2 debilitating, the reports of Plaintiff’s psychological improvement, the infrequency of
3 Plaintiff’s panic attacks, and Plaintiff’s GAF score were specific and legitimate reasons
4 for rejecting Dr. Steingard’s opinion.

5 **3. Dr. Ivan M. Filner, D.O.**

6 Beginning in 2009, Dr. Filner examined and treated Plaintiff on several occasions.
7 A.R. 259-61, 318-23, 433-48, 658-99, 878-79. Dr. Filner filled out a brief report after
8 each examination. *Id.* His reports usually stated that Plaintiff suffered from various
9 impairments, including insomnia, depression, anxiety, osteoarthritis, and breathing
10 difficulties. *See, e.g.*, A.R. 260, 435-48, 878-79. For the physical exam of Plaintiff, Dr.
11 Filner almost always noted positive results. *See* A.R. 318-19, 435-48. For example, on
12 December 2, 2011, he found that “[p]atient appears well nourished, well developed and
13 hydrated,” that his respiratory and cardiovascular systems are normal, and that Plaintiff
14 shows “[n]o unusual anxiety or evidence of depression.” A.R. 436.

15 Dr. Filner’s reports do not note or suggest that Plaintiff was in pain or disabled.
16 Nevertheless, in two separate medical assessments of Plaintiff’s ability to work, Dr.
17 Filner found that Plaintiff could not “perform work 8 hours a day, 5 days a week on a
18 regular and consistent basis” because of his depression, anxiety, and osteoarthritis.
19 A.R. 433, 878. In the first assessment, completed on December 2, 2011 (the same day on
20 which he found Plaintiff’s physical exam to be normal), Dr. Filner found that Plaintiff
21 could not perform most activities except for occasional or frequent use of his feet and left
22 hand. A.R. 433. He also wrote that, in an eight-hour workday, Plaintiff could sit for no
23 more than two hours and stand or walk for less than two hours. *Id.* In the second
24 assessment, completed on May 9, 2013, Dr. Filner made similar findings, also noting that

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occasionally fair. A.R. 268. Dr. Dalton found that Plaintiff was able to understand and
follow “simple and detailed instructions” and had “a fair to good ability [to] interact
with” others. A.R. 313. These opinions are not inconsistent with the ALJ’s finding that
Plaintiff is capable of semi-skilled work, which is defined as “work which needs some
skills but does not require doing the more complex work duties.” 20 C.F.R.
§ 404.1568(b).

1 Plaintiff would likely be absent from work for six or more days each month. A.R. 878-
2 79.

3 The ALJ rejected Dr. Filner's opinion for the following reasons: (1) Dr. Filner's
4 opinion regarding Plaintiff's exertional abilities is inconsistent with Plaintiff's testimony;
5 (2) Dr. Filner's records do not mention a need for Plaintiff to frequently alternate his
6 positions; (3) Dr. Filner's opinion is inconsistent with the evidence as a whole; and
7 (4) Dr. Filner's opinion is inconsistent with physical-examination reports because the
8 reports "were entirely normal and his notes rarely, if ever, contained actual descriptions
9 of, or observations made by him about [Plaintiff's] conditions." A.R. 37. The ALJ did
10 not point to a medical opinion that contradicts Dr. Filner's, and therefore the Court will
11 assume that the ALJ needed clear and convincing reasons for rejecting his opinion.²

12 The Court finds that the ALJ gave two clear and convincing reasons. First, Dr.
13 Filner's opinion is not consistent with the evidence as a whole. While the record contains
14 ample evidence of Plaintiff's shoulder and knee injuries (A.R. 282, 689), the record
15 contains sparse evidence that these injuries limited Plaintiff's work abilities. As noted by
16 the ALJ, numerous records state that Plaintiff suffers minimal pain and his injuries do not
17 cause significant limitations. A.R. 721 ("Pain control is described as adequate. No
18 problems or complications have been reported."), 728, 730, 741, 746, 820 ("[Plaintiff] is
19 doing well currently, without any complaints of knee pain, however he still has lower leg
20 pain on occasion."), 886-87 (report of zero pain), 897 ("[Plaintiff] has no complaints of
21 pain or discomfort in that knee. He is completely rehabilitated the right knee, and return
22 to full activity."). Reports following Plaintiff's surgeries also show normal healing and
23 no complications. A.R. 722, 730 ("No problems or complications [from the surgery]

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25 ² The Commissioner argues that Dr. Julio Angulo's opinion contradicts Dr.
26 Filner's. Dr. Angulo, however, addressed Plaintiff's psychological impairments, while
27 Dr. Filner addressed not only Plaintiff's psychological impairments but also his physical
28 problems. Thus, Dr. Filner's opinion is contradicted only to the extent its findings rely
on Plaintiff's psychological problems. The Court is unable to determine whether Dr.
Filner's assessments of Plaintiff's work ability were based on Plaintiff's psychological or
physical impairments. For that reason, and for the sake of simplicity, the Court will
assess whether the ALJ gave clear and convincing reasons – as opposed to "specific and
legitimate reasons" – for rejecting Dr. Filner's opinion. *Lester*, 81 F.3d at 830.

1 have been reported.”), 888 (“[P]atient is doing well with progress following his [surgery].
2 The patient has no problems or issues today with examination or with activities of daily
3 living.”). These records are evidence that Plaintiff’s physical impairments are not
4 severely limiting, and provide a convincing reason for rejecting Dr. Filner’s opinion.

5 Second, Dr. Filner’s regular reports on Plaintiff do not indicate that Plaintiff is
6 severely limited and do not support Dr. Filner’s ultimate opinion. On an almost monthly
7 basis since 2009, Dr. Filner has filled out a brief report on Plaintiff’s condition. Dr.
8 Filner has consistently noted that Plaintiff suffers various ailments, including depression,
9 anxiety, osteoarthritis, and COPD. But Dr. Filner has rarely reported any problems with
10 Plaintiff from his review of Plaintiff systems (e.g., constitutional, respiratory,
11 cardiovascular) and his physical examination of Plaintiff. As already noted, a typical
12 report states that “[p]atient appears well nourished, well developed and hydrated,” that
13 his respiratory and cardiovascular systems are normal, and that Plaintiff shows “[n]o
14 unusual anxiety or evidence of depression.” A.R. 436. The leap from these reports to Dr.
15 Filner’s final conclusion that Plaintiff cannot sit or stand for more than two hours, and
16 that Plaintiff will require frequent absences, is unexplained. A.R. 433, 878-79. Indeed,
17 Dr. Filner does not identify which ailment severely limits Plaintiff, and his assessment of
18 Plaintiff’s work ability is simply a check-box form. “The ALJ need not accept the
19 opinion of any physician, including a treating physician, if that opinion is brief,
20 conclusory, and inadequately supported by clinical findings.” *Thomas*, 278 F.3d at 957;
21 *see also* 20 C.F.R. § 404.1527(c)(3) (“The better an explanation a source provides for an
22 opinion, the more weight we will give that opinion.”).³

23 The Court recognizes that the uncontradicted opinion of a treating physician is
24 entitled to great deference. *Lester*, 81 F.3d at 830. This is particularly so when the
25 physician has treated the claimant over an extended period of time. *See* 20 C.F.R.

26
27 ³ As noted, Dr. Filner did not explain whether Plaintiff’s psychological or physical
28 impairments were the primary cause of his disability. To the extent that Dr. Filner relied
on Plaintiff’s psychological problems, the ALJ properly rejected his opinion in favor of
Dr. Angulo, for the reasons stated above.

1 § 404.1527(c)(2). But when the treating physician regularly reports that a claimant is
2 physically healthy, the physician's final opinion is inconsistent with other medical
3 records, and the physician does not adequately explain why the claimant is severely
4 impaired, the ALJ may properly reject his opinion.

5 **4. Dr. Ali Mojaverian, M.D.**

6 Dr. Mojaverian treated Plaintiff from late 2012 to early 2013. A.R. 847-77. He
7 diagnosed Plaintiff as suffering from sleep disturbance, obstructive sleep apnea, dyspnea,
8 tobacco abuse, and COPD. A.R. 849, 857, 867. In his reports, Dr. Mojaverian
9 consistently found that Plaintiff's constitutional, gastrointestinal, and cardiovascular
10 systems were normal, although he noted that Plaintiff suffered from shortness of breath.
11 A.R. 847, 856, 866, 872, 875. The results of Plaintiff's physical exams were normal.
12 A.R. 848, 857, 867, 873, 876. On June 24, 2013, Dr. Mojaverian completed an
13 assessment of Plaintiff's ability to work. A.R. 932-33. He found that Plaintiff was
14 unable to work eight hours a day, five days a week, on a consistent basis. He also found
15 that Plaintiff could sit between two and three hours on a workday, that he could stand or
16 walk for less than two hours, and that he would need to frequently alternate his position.
17 *Id.* Significantly, Dr. Mojaverian did not identify the impairment that affected Plaintiff's
18 ability to work, although he noted that Plaintiff's fatigue might cause additional
19 limitations. *Id.*

20 The ALJ rejected Dr. Mojaverian's opinion for largely the same reasons that he
21 rejected Dr. Filner's. The ALJ also emphasized that Dr. Mojaverian had provided little
22 treatment for Plaintiff. A.R. 37. The ALJ did not point to a medical opinion that
23 contradicts Dr. Mojaverian's, and therefore the ALJ needed clear and convincing reasons
24 for rejecting his opinion.

25 The ALJ properly rejected Dr. Mojaverian's opinion because the opinion is
26 inconsistent with the evidence, not supported by the doctor's own findings, and is
27 completely unexplained. As already discussed, the evidence in the record depicts a
28 person who is recovering from his surgeries, who is not debilitated by pain, and whose

1 psychological symptoms are not as great as he claims. Additionally, Dr. Mojaverian's
2 reports consistently stated that the results from Plaintiff's physical exams were normal
3 and that some of Plaintiff's impairments have improved over time. A.R. 856 ("In the
4 interval month(s) . . . the patient's dyspnea has improved. Episodes occur intermittently.
5 The severity is mild."), 866. The doctor did describe Plaintiff's COPD as "mildly
6 severe." A.R. 847. But he also noted that "the symptoms have been fluctuating," that
7 Plaintiff's respiratory system was "clear to auscultation," and that his pulmonary system
8 exhibited mild obstruction only. A.R. 847, 867.

9 More significantly, Dr. Mojaverian's assessment of Plaintiff's work ability was
10 unexplained. The doctor did not identify the impairment that imposes severe work
11 limitations on Plaintiff. A.R. 932. The Court is left unsure whether Plaintiff's sleep
12 problems, COPD, or tobacco use is the cause of Plaintiff's work limitations. And
13 although the doctor noted that Plaintiff's fatigue might cause additional limitations, he
14 did not explain what these limitations are. Dr. Mojaverian's opinion amounts to an
15 unexplained check-box form, and "[o]pinions on a check-box form or form reports which
16 do not contain significant explanation of the basis for the conclusions may [be] accorded
17 little or no weight." *Henderson v. Astrue*, 634 F. Supp. 2d 1182, 1192 (E.D. Wash. 2009)
18 (citing *Crane v. Shalala*, 76 F.3d 251, 253 (9th Cir. 1996); *Johnson v. Chater*, 87 F.3d
19 1015, 1018 (8th Cir. 1996)). Finally, the ALJ was entitled to give less deference to Dr.
20 Mojaverian's opinion due to the shortness of his relationship with Plaintiff. 20 C.F.R.
21 §§ 404.1527(c)(2)(i), 416.927(c)(2)(i).

22 **C. The ALJ Did Not Err in Evaluating Plaintiff's Credibility.**

23 **1. Legal Standard.**

24 An ALJ must engage in a two-step analysis to determine whether a claimant's
25 testimony regarding subjective pain or symptoms is credible. *Vasquez v. Astrue*, 572
26 F.3d 586, 591 (9th Cir. 2009). First, the ALJ must determine whether the claimant has
27 presented objective medical evidence of an underlying impairment that could reasonably
28 be expected to produce the pain or other symptoms alleged. *Garrison v. Colvin*, 759 F.3d

1 995, 1014 (9th Cir. 2014) (citations omitted). “In this analysis, the claimant is not
2 required to show ‘that her impairment could reasonably be expected to cause the severity
3 of the symptom she has alleged; she need only show that it could reasonably have caused
4 some degree of the symptom.’” *Id.* (quoting *Smolen v. Chater*, 80 F.3d 1273, 1282 (9th
5 Cir. 1996)). Second, if there is no evidence of malingering, the ALJ may reject the
6 claimant’s testimony about the testimony of her symptoms only by offering specific,
7 clear, and convincing reasons for doing so. *Id.* at 1014-15; *Burrell v. Colvin*, 775 F.3d
8 1133, 1136-37 (9th Cir. 2014). To support a lack of credibility finding, the ALJ must
9 “‘point to specific facts in the record which demonstrate that [the claimant] is in less pain
10 than she claims.’” *Vasquez*, 572 F.3d at 592 (quoting *Dodrill v. Shalala*, 12 F.3d 915,
11 918 (9th Cir. 1993)).

12 **2. Plaintiff’s Testimony.**

13 Plaintiff testified at two hearings. A.R. 946, 960. At both hearings, Plaintiff
14 stated that he left his last job because of his anxiety and panic attacks. A.R. 951, 966. He
15 explained that his panic attacks occur about once a week and usually in the middle of the
16 night (A.R. 952), and that his psychological problems force him to avoid people and
17 crowded places (A.R. 952, 966). He also stated that he has difficulty remembering and
18 concentrating. A.R. 972. He has contemplated suicide. A.R. 953-34. Plaintiff discussed
19 his knee and shoulder injuries. A.R. 955-57, 967-69. He testified that he cannot sit,
20 stand, or walk for more than sixty minutes at a time. *Id.* As for his daily activities,
21 Plaintiff stated that he does occasional chores, cooks simple meals, takes care of personal
22 hygiene, goes to the grocery store, and spends time alone watching television. A.R. 958,
23 969-71. Finally, Plaintiff stated that he frequently naps and suffers from insomnia. A.R.
24 971-72.

25 **3. Analysis.**

26 The ALJ first found that Plaintiff had various impairments – including depression,
27 anxiety, pain in his knees and shoulders, and COPD – that could reasonably be expected
28 to produce the pain or other symptoms that Plaintiff alleged. The ALJ then discredited

1 Plaintiff's testimony to the extent that it was inconsistent with the ALJ's finding that
2 Plaintiff is capable of light work.

3 The ALJ did not err in discrediting Plaintiff's testimony. Plaintiff testified that his
4 depression, anxiety, and panic attacks interfered with his ability to work. A.R. 951-52.
5 But as discussed, two doctors found that Plaintiff's psychological problems do not
6 prevent him from working (A.R. 267, 313), and their opinions are supported by the
7 record. *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1197 (9th Cir. 2004)
8 (finding that an ALJ may rely on doctors' opinions in discrediting a claimant's
9 testimony). Plaintiff also claimed that his shoulder and knee injuries prevented him from
10 sitting, standing, or walking for more than sixty minutes. While this testimony is
11 consistent with the opinions of Doctors Filner and Mojaverian, it is inconsistent with the
12 extensive evidence that the ALJ found more probative. A.R. 721, 728, 730, 741, 746,
13 820, 886-87, 897. The ALJ was entitled to rely on reports stating that Plaintiff "is
14 completely rehabilitated [on] the right knee, and [may] return to full activity" (A.R. 897),
15 and Plaintiff "has no problems or issues today with examination or with activities of daily
16 living" (A.R. 888). See *Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1161
17 (9th Cir. 2008) ("Contradiction with the medical record is a sufficient basis for rejecting
18 the claimant's subjective testimony.").

19 The ALJ also found that Plaintiff's earlier statements to medical providers were
20 inconsistent with his testimony. For instance, Plaintiff claimed that he has been disabled
21 since 2009. But he previously reported to a physical therapist that he had been
22 "independent with all mobility and [activities of daily living]" until 2012 (A.R. 905), and
23 reported elsewhere that he was living alone and was functionally independent in 2012.
24 A.R. 919. Furthermore, although Plaintiff testified that his physical impairments severely
25 limited his sitting, standing, and walking, he has reported to physicians very low levels of
26 pain and an ability to function on a daily basis. A.R. 721, 886-87, 897. A claimant's
27 prior inconsistent statements regarding his pain and symptoms are an important factor in
28 assessing the claimant's credibility. *Smolen*, 80 F.3d at 1284.

1 The Court finds the ALJ’s reasons for discrediting Plaintiff’s testimony to be
2 specific, clear, and convincing. Doctor’s opinions and treatment notes, and Plaintiff’s
3 inconsistent statements, cast doubt on Plaintiff’s testimony, and the ALJ did not err in
4 rejecting it.⁴

5 **D. The ALJ Did Not Err in Assessing Ms. Qualls’ Statement.**

6 Plaintiff argues that the ALJ erred by rejecting the statement of Jamie Qualls,
7 Plaintiff’s girlfriend. If an ALJ discounts the statement of a lay witness, he must give
8 reasons that are germane to each witness. *Dodrill*, 12 F.3d at 919. Ms. Qualls filled out a
9 “function report” and stated the following: Plaintiff mostly lies in bed and watches
10 television; he suffers from depression, anxiety, and panic attacks; he lacks energy and
11 does not function as he used to; and his injuries affect his memory, concentration,
12 understanding, and sociability. A.R. 174-81.

13 The ALJ discredited Ms. Quall’s opinion for three reasons: (1) it is inconsistent
14 with the evidence in the record; (2) it is most likely biased since she is Plaintiff’s
15 girlfriend; and (3) even if true, it does not show that Plaintiff is disabled. The Court finds
16 the third reason to be dispositive. Ms. Quall’s opinion does not show that Plaintiff is
17 disabled, but merely establishes that Plaintiff has psychological difficulties that affect his
18 daily functioning. The ALJ also found that Plaintiff suffers psychological problems that
19 affect his daily functioning, but that they were not serious enough to prevent him from
20 working. Notably, Ms. Quall did not discuss Plaintiff’s shoulder or knee impairments.
21 The ALJ properly addressed Ms. Quall’s opinion.

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26 ⁴ In discrediting Plaintiff’s testimony, the ALJ also cited Plaintiff’s occasional
27 non-compliance and his failure to seek treatment. *See, e.g.*, A.R. 785 (Plaintiff not
28 following instruction to wear a sling). Because the ALJ’s other reasons were sufficient
for discrediting Plaintiff, the Court will not address these reasons even if they were
erroneous. *See Batson*, 359 F.3d at 1197 (finding that, even if the record does not support
one of the ALJ’s reasons for discrediting a claimant, the error is harmless if the other
reasons are sufficient).

1 **E. Conclusion.**

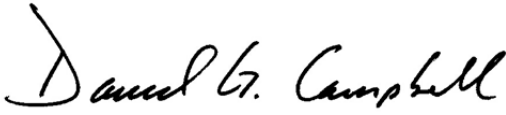
2 In various parts of his brief, Plaintiff argues more broadly that substantial evidence
3 does not support the ALJ’s decision. He argues that the “longitudinal” or entire record
4 shows that Plaintiff is in fact disabled. The Court agrees that Plaintiff suffers from
5 various impairments. The issue, however, is not whether Plaintiff suffers from these
6 impairments. The ALJ found that he did. Rather, the issue is the extent to which these
7 impairments limit Plaintiff’s ability to work. Three doctors found that Plaintiff’s
8 impairments prevented him from working, and Plaintiff also testified that he was
9 disabled. But, as discussed, the ALJ not only gave sufficient reasons for rejecting the
10 opinions and testimony, but also discussed how the record as a whole does not support
11 them. Examining doctors and nurses frequently reported that Plaintiff was not suffering
12 pain from his knees or shoulders. *See* A.R. 721, 728, 730, 741, 746, 820, 886-87, 888
13 (“The patient has no problems or issues today with examination or with activities of daily
14 living.”), 897. Two doctors concluded that Plaintiff’s depression and anxiety did not
15 prevent him from working. A.R. 267 (“Overall, however, I do not see dysfunctions that
16 might totally impede ability to participate in the work force.”), 313. Plaintiff has
17 previously reported that his psychological and physical impairments do not hamper his
18 daily functioning. A.R. 721, 886-87, 897. And finally, the doctors who opined that
19 Plaintiff is disabled consistently gave positive reports after they physically examined
20 Plaintiff. A.R. 436, 848, 857.

21 Substantial evidence supports the ALJ’s decision. Even if Plaintiff has shown that
22 the Court could reasonably interpret the record as showing that Plaintiff is disabled, the
23 ALJ’s interpretation remains reasonable. “Where the evidence is susceptible to more
24 than one rational interpretation, one of which supports the ALJ’s decision, the ALJ’s
25 conclusion must be upheld.” *Thomas*, 278 F.3d at 954.

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IT IS ORDERED that the final decision of the Commissioner of Social Security is **affirmed**. The Clerk shall enter judgment accordingly and **terminate** this case.

Dated this 15th day of May, 2015.



David G. Campbell
United States District Judge