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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA  
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9 Brad Blansette,

10 Plaintiff,

11 v.

12 Carolyn W. Colvin, Acting Commissioner  
13 of Social Security,

14 Defendant.

No. CV-15-00643-PHX-NVW

**ORDER**

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

21 **I. BACKGROUND**

22 **A. Factual Background**

23 Plaintiff was born in November 1963. He completed two years of college, earning  
24 an associate’s degree in electrical engineering technology. Plaintiff was self-employed  
25 from 1997 to 2004 and sold computer equipment. After that, he performed telemarketing  
26 and a few part-time jobs. In 2006, he suffered a brain injury in a motorcycle accident.  
27 Plaintiff worked as a sales associate at a RadioShack store from December 2008 through  
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1 July 2010, when the store closed and Plaintiff was not relocated to another store.  
2 Plaintiff experiences chronic headaches, left foot and ankle pain, fatigue, and insomnia.

3 **B. Procedural History**

4 On July 13, 2011, Plaintiff applied for disability insurance benefits and  
5 supplemental security income,<sup>1</sup> alleging disability beginning June 26, 2006. On July 16,  
6 2013, he appeared with his attorney and testified at a hearing before the ALJ. A  
7 vocational expert also testified. During the hearing and through counsel, Plaintiff  
8 amended his alleged onset date to July 27, 2010.

9 On August 16, 2013, the ALJ issued a decision that Plaintiff was not disabled  
10 within the meaning of the Social Security Act. The Appeals Council denied Plaintiff's  
11 request for review of the hearing decision, making the ALJ's decision the  
12 Commissioner's final decision. On April 9, 2015, Plaintiff sought review by this Court.

13 **II. STANDARD OF REVIEW**

14 The district court reviews only those issues raised by the party challenging the  
15 ALJ's decision. *See Lewis v. Apfel*, 236 F.3d 503, 517 n.13 (9th Cir. 2001). The court  
16 may set aside the Commissioner's disability determination only if the determination is  
17 not supported by substantial evidence or is based on legal error. *Orn v. Astrue*, 495 F.3d  
18 625, 630 (9th 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.*  
23 As a general rule, "[w]here the evidence is susceptible to more than one rational  
24 interpretation, one of which supports the ALJ's decision, the ALJ's conclusion must be

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26 <sup>1</sup> The ALJ's decision from which this appeal is taken denies only Plaintiff's  
27 application for disability insurance benefits and does not mention his application for  
28 supplemental security income.

1 upheld.” *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002) (citations omitted);  
2 *accord Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012) (“Even when the evidence  
3 is susceptible to more than one rational interpretation, we must uphold the ALJ’s findings  
4 if they are supported by inferences reasonably drawn from the record.”).

### 5 **III. FIVE-STEP SEQUENTIAL EVALUATION PROCESS**

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

10 At the first step, the ALJ determines whether the claimant is engaging in  
11 substantial gainful activity. 20 C.F.R. § 404.1520(a)(4)(i). If so, the claimant is not  
12 disabled and the inquiry ends. *Id.* At step two, the ALJ determines whether the claimant  
13 has a “severe” medically determinable physical or mental impairment.  
14 § 404.1520(a)(4)(ii). If not, the claimant is not disabled and the inquiry ends. *Id.* At step  
15 three, the ALJ considers whether the claimant’s impairment or combination of  
16 impairments meets or medically equals an impairment listed in Appendix 1 to Subpart P  
17 of 20 C.F.R. Pt. 404. § 404.1520(a)(4)(iii). If so, the claimant is automatically found to  
18 be disabled. *Id.* If not, the ALJ proceeds to step four. At step four, the ALJ assesses the  
19 claimant’s residual functional capacity and determines whether the claimant is still  
20 capable of performing past relevant work. § 404.1520(a)(4)(iv). If so, the claimant is not  
21 disabled and the inquiry ends. *Id.* If not, the ALJ proceeds to the fifth and final step,  
22 where he determines whether the claimant can perform any other work based on the  
23 claimant’s residual functional capacity, age, education, and work experience.  
24 § 404.1520(a)(4)(v). If so, the claimant is not disabled. *Id.* If not, the claimant is  
25 disabled. *Id.*

26 At step one, the ALJ found that Plaintiff last met the insured status requirements  
27 of the Social Security Act on June 30, 2013, and that he did not engage in substantial  
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1 gainful activity from July 27, 2010, through June 30, 2013. At step two, the ALJ found  
2 that through the date last insured Plaintiff had the following severe impairments: post-  
3 concussion syndrome with headaches, status post motor vehicle accident in 2006;  
4 adjustment disorder, NOS; personality disorder NOS; cervical degenerative disc disease;  
5 and left lower extremity injury with pes planus (“flat foot”). At step three, the ALJ  
6 determined that through the date last insured Plaintiff did not have an impairment or  
7 combination of impairments that met or medically equaled the severity of an impairment  
8 listed in 20 C.F.R. Part 404, Subpart P, Appendix 1.

9 At step four, the ALJ found that through the date last insured Plaintiff:

10 had the residual functional capacity to perform light work as defined in 20  
11 CFR 404.1567(b) except the claimant was able to occasionally push and  
12 pull with the lower left extremity. He was also able to occasionally climb  
13 ramps and stairs, balance, kneel, crouch, and crawl. In addition, the  
14 claimant was able to frequently stoop, reach, handle, and finger. He should  
15 have avoided climbing ladders, ropes, and scaffolds. Further, the claimant  
16 should have avoided concentrated exposure to loud noise and hazards,  
17 including unprotected heights and moving machinery. He was limited to  
18 simple, routine tasks with occasional changes in the work setting,  
19 occasional interaction with the public and co-workers, and no fast paced,  
20 high production demands.

21 The ALJ further found that through the date last insured Plaintiff was unable to perform  
22 any past relevant work. At step five, the ALJ concluded that, through the date last  
23 insured, considering Plaintiff’s age, education, work experience, and residual functional  
24 capacity, there were jobs that existed in significant numbers in the national economy that  
25 Plaintiff could perform.

#### 26 **IV. ANALYSIS**

##### 27 **A. The ALJ Did Not Err in Weighing Medical Source Opinion Evidence.**

##### 28 **1. Legal Standard**

In weighing medical source opinions in Social Security cases, the Ninth Circuit  
distinguishes among three types of physicians: (1) treating physicians, who actually treat  
the claimant; (2) examining physicians, who examine but do not treat the claimant; and

1 (3) non-examining physicians, who neither treat nor examine the claimant. *Lester v.*  
2 *Chater*, 81 F.3d 821, 830 (9th Cir. 1995). The Commissioner must give weight to the  
3 treating physician’s subjective judgments in addition to his clinical findings and  
4 interpretation of test results. *Id.* at 832-33. Where a treating physician’s opinion is not  
5 contradicted by another physician, it may be rejected only for “clear and convincing”  
6 reasons, and where it is contradicted, it may not be rejected without “specific and  
7 legitimate reasons” supported by substantial evidence in the record. *Id.* at 830; *Orn v.*  
8 *Astrue*, 495 F.3d 625, 632 (9th Cir. 2007).

9 Further, an examining physician’s opinion generally must be given greater weight  
10 than that of a non-examining physician. *Lester*, 81 F.3d at 830. As with a treating  
11 physician, there must be clear and convincing reasons for rejecting the uncontradicted  
12 opinion of an examining physician, and specific and legitimate reasons, supported by  
13 substantial evidence in the record, for rejecting an examining physician’s contradicted  
14 opinion. *Id.* at 830-31.

15 In deciding weight to give any medical opinion, the ALJ considers not only  
16 whether the source has a treating or examining relationship with the claimant, but also  
17 whether the treatment or examination is related to the alleged disability, the length of the  
18 relationship, frequency of examination, supporting evidence provided by the source, and  
19 medical specialization of the source. 20 C.F.R. § 404.1527(c). The ALJ may discount a  
20 physician’s opinion that is based only the claimant’s subjective complaints without  
21 objective evidence. *Batson v. Comm’r of Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th Cir.  
22 2004).

23 **2. Treating Physician Chad E. Campbell, D.O.**

24 Plaintiff saw primary care physician Dr. Campbell on April 11, 2013, and reported  
25 chronic pain, fatigue, and “odd symptoms” that possibly were neurological in nature. Dr.  
26 Campbell’s general examination findings were normal, including no clubbing, cyanosis,  
27 or edema of the extremities and normal motor strength of the upper and lower  
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1 extremities. He noted that he spent 45 minutes in conversation with Plaintiff and did not  
2 prescribe any medications. Although Dr. Campbell made a note to get Plaintiff's medical  
3 records and order lab tests, for "follow up" he wrote only "prn," and the record does not  
4 show that Plaintiff saw Dr. Campbell other than on April 11, 2013.

5 Dr. Campbell referred Plaintiff to a rheumatologist who saw Plaintiff in June  
6 2013. Upon examination, the rheumatologist concluded that Plaintiff had chronic pain  
7 syndrome with somatization disorder (*i.e.*, extreme anxiety about physical symptoms),  
8 not treatable by the rheumatologist.

9 In July 2013 Dr. Campbell completed a Residual Functional Capacity Form. Dr.  
10 Campbell opined that in an 8-hour workday, Plaintiff could sit for 2 to 3 hours, 20  
11 minutes at one time; stand for 1 hour, 20 minutes at one time; walk for 1 hour, 10 minutes  
12 at one time; and recline 7 hours, 20 minutes at one time. Dr. Campbell opined that  
13 Plaintiff was not capable of using either hand for repetitive grasping, pushing/pulling, or  
14 fine manipulations and was not capable of using his feet for repetitive operation of foot  
15 controls. Dr. Campbell further opined that Plaintiff's condition caused frequent severe  
16 pain, frequent severe fatigue, severe inability to deal with stress, and frequent severe  
17 cognitive problems. He reported that the medications he prescribed for Plaintiff caused  
18 drowsiness, nausea, impaired concentration, and irritability. Dr. Campbell opined that  
19 Plaintiff would miss work more than 75% of time due to his medical conditions, would  
20 need to take 5-minute breaks every 30 minutes, and would need to alternate between  
21 sitting and standing positions at will. Finally, Dr. Campbell opined that it was his  
22 medical opinion that Plaintiff had been unable to sustain any type of full-time  
23 employment since July 1, 2010.

24 The ALJ noted that Dr. Campbell's assessment was more restrictive than Plaintiff  
25 had alleged, relied heavily on Plaintiff's subjective report of symptoms and limitations,  
26 and was unsupported by the medical evidence of record, including Dr. Campbell's  
27 physical examination findings. As an example, the ALJ observed that Dr. Campbell  
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1 asserted Plaintiff was unable to use either hand for grasping, pushing, pulling, and fine  
2 manipulations, yet found no deficiencies or deformities upon physical examination. The  
3 ALJ did not err by not giving Dr. Campbell's opinion controlling weight and gave clear  
4 and convincing reasons for not doing so.

### 5 **3. Examining Psychologist Shefali Gandhi, Psy.D.**

6 On April 9, 2012, Dr. Gandhi performed a psychological examination of Plaintiff.  
7 On intelligence testing Plaintiff demonstrated very superior verbal reasoning abilities,  
8 high average nonverbal reasoning abilities, and high average ability to sustain attention,  
9 concentrate, and exert mental control. He demonstrated superior ability in processing  
10 simple or routine visual material without making errors. Plaintiff did not demonstrate  
11 any of the symptoms characteristic of Asperger's Disorder.

12 Dr. Gandhi found evidence of a personality disorder, but did not have enough  
13 information to diagnose a specific personality disorder, such as narcissistic personality  
14 disorder. She noted that he demonstrated a strong tendency to be socially disinhibited at  
15 times and appeared to lack insight into how his behavior affected others. Dr. Gandhi  
16 concluded:

17 Although his overall cognitive difficulties are not likely to interfere with his  
18 social and occupational functioning, his current interpersonal challenges  
19 seem to have serious functional implications. His pattern of instability of  
20 interpersonal relationships, consistent irresponsibility as indicated by  
21 repeated failure to sustain consistent work behavior, inappropriate  
interaction with others, and arrogant behavior and attitude may adversely  
affect his social and occupational functioning.

22 Dr. Gandhi completed a Psychological/Psychiatric Medical Source Statement.  
23 She opined that Plaintiff was able to understand and remember simple instructions and  
24 able to engage in simple, routine, repetitive tasks that were not physically demanding.  
25 Dr. Gandhi said Plaintiff was able to maintain attention and concentration throughout  
26 several hours of testing and was able to adapt to changing tasks. Dr. Gandhi commented,  
27 however, that Plaintiff had a history of unstable employment.

1           The ALJ gave Dr. Gandhi's opinion great weight. He expressly found that the  
2 opinion considered Plaintiff's subjective complaints and was consistent with the  
3 treatment record, objective findings, opinion evidence, and the medical evidence as a  
4 whole.

#### 5                           **4.     Reviewing Psychologist Christal Janssen, Ph.D.**

6           Based on Dr. Gandhi's examination findings and opinions, Dr. Janssen opined that  
7 Plaintiff had mild restriction of activities of daily living, moderate difficulties in  
8 maintaining social functioning, and moderate difficulties in maintaining concentration,  
9 persistence, or pace. She further opined that Plaintiff was not significantly limited in  
10 most areas, but was moderately limited in the ability to carry out detailed instructions,  
11 maintain attention and concentration for extended periods, sustain an ordinary routine  
12 without special supervision, accept instructions and respond appropriately to criticism  
13 from supervisors, respond appropriately to changes in the work setting, set realistic goals  
14 or make plans independently of others, complete a normal workday and workweek  
15 without interruptions from psychologically based symptoms, and perform at a consistent  
16 pace without an unreasonable number and length of rest periods. Dr. Janssen concluded  
17 that Plaintiff appeared able to perform at least simple/repetitive unskilled work with  
18 incidental interpersonal contact and direct/concrete supervision.

19           Plaintiff contends that the vocational expert was given a hypothetical with the  
20 limitations opined by Dr. Janssen, and the vocational expert testified that there would be  
21 no work available with those limitations. However, Plaintiff's counsel imposed a  
22 condition on the hypothetical that was not included in Dr. Janssen's or Dr. Gandhi's  
23 opinions. Plaintiff asked the vocational expert to assume not only that Plaintiff had the  
24 moderate limitations identified by Dr. Janssen, but also to assume that "all those  
25 moderate limitations represented that up to 1/3 of the day the individual would suffer  
26 from these limitations." With the assumption that the moderate limitations would  
27 interfere with Plaintiff's performance as much as 1/3 of the workday, the vocational  
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1 expert opined there would be no work available. Even if the ALJ gave “great weight” to  
2 Dr. Gandhi’s opinion and believed that Dr. Janssen’s opinion appropriately converted Dr.  
3 Gandhi’s opinion to certain moderate limitations, the ALJ did not err by disregarding  
4 Plaintiff’s counsel’s hypothetical that assumed these moderate limitations would interfere  
5 with Plaintiff’s work up to 1/3 of the day.

6 **B. The ALJ Did Not Err by Failing to Consider Grid Rule 201.14.**

7 Grid Rule 201.14 of the Medical-Vocational Guidelines directs a finding of  
8 disabled for an individual who is 45-49 years old, limited to sedentary work, and does not  
9 have transferable skills. Plaintiff contends that in determining whether Plaintiff was able  
10 to perform work other than past relevant work, the ALJ should have considered Plaintiff  
11 as an individual 50-54 years old because at the time of the hearing he was 49½ years old  
12 and should have considered his residual functional capacity as sedentary because it did  
13 not include the full range of light work.

14 Age is a vocational factor considered in deciding whether a claimant can make the  
15 adjustment to other work. If a claimant is younger than 50 years old, it is generally  
16 assumed that age will not seriously affect the claimant’s ability to adjust to other work.  
17 20 C.F.R. § 404.1563(c). However, if the claimant is “within a few days to a few months  
18 of reaching an older age category,” and using the older age category would result in a  
19 determination that the claimant is disabled, the ALJ will consider whether to use the older  
20 age category after evaluating the overall impact of all the factors. 20 C.F.R.  
21 § 404.1563(b). For the purpose of deciding whether a claimant is entitled to disability  
22 insurance benefits,<sup>2</sup> the oldest age to be considered is the claimant’s age at the date last  
23 insured. SSR 83-10. On June 30, 2013, the date Plaintiff was last insured, Plaintiff was  
24 49 years old. Moreover, he was more than 4 months from becoming 50 years old.

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27 <sup>2</sup> This appeal challenges only the ALJ’s decision denying Plaintiff’s application  
28 for disability insurance benefits. Any issues regarding Plaintiff’s application for  
supplemental security income are not before the Court.

1           The Medical-Vocational Guidelines provide rules for deciding whether a claimant  
2 is capable of performing other work based on findings of fact regarding the claimant’s  
3 age, education, and work experience in combination with his exertional residual  
4 functional capacity, *i.e.*, maximum sustained work capability for sedentary, light,  
5 medium, heavy, or very heavy work. SSR 83-10. Where one or more of the criteria of a  
6 rule are not met, no decision is directed, and the rules provide guidance only in  
7 conjunction with the definitions and discussions in the text of the Social Security  
8 regulations. *Id.* “Since the rules are predicated on an individual’s having an impairment  
9 which manifests itself by limitations in meeting the strength requirements of jobs, they  
10 may not be fully applicable where the nature of an individual’s impairment does not  
11 result in such limitations, e.g., certain mental, sensory, or skin impairments.” 20 C.F.R.  
12 Pt. 404, Subpt. P, App. 2, § 200.00(e).

13           This is not the case where the claimant’s exertional capacity falls between the  
14 sedentary and light levels. The ALJ’s capacity findings are consistent with light work in  
15 the primary strength activities of sitting, standing, walking, lifting, carrying, pushing, and  
16 pulling, except for only occasional pushing and pulling with the lower left extremity.  
17 Plaintiff’s postural, environmental, and mental limitations erode the unskilled light  
18 occupational base, but they do not mean that he is capable of performing the full range of  
19 sedentary work. Therefore, Grid Rule 201.14 does not apply, and it was appropriate for  
20 the ALJ to rely on the vocational expert’s testimony regarding the existence of jobs in the  
21 national economy<sup>3</sup> for an individual with Plaintiff’s age, education, work experience, and  
22 residual functional capacity.

23           **C.     Consideration of New Evidence**

24           Upon judicial review, the court “may at any time order additional evidence to be  
25 taken before the Commissioner of Social Security, but only upon a showing that there is  
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27           <sup>3</sup> Jobs existing “in the national economy” means either in the region where the  
28 claimant lives or in several regions in the country. 20 C.F.R. § 404.1560(c)(1).

1 new evidence which is material and that there is good cause for the failure to incorporate  
2 such evidence into the record in a prior proceeding.” 42 U.S.C. § 405(g). On October  
3 23, 2015, Plaintiff requested the Court to consider updated medical information regarding  
4 a diagnosis of neuropathy obtained in August 2015. (Doc. 16.) Plaintiff believes the  
5 neuropathy was caused by an antibiotic he received in June 2006.

6 The medical records Plaintiff submitted to obtain Social Security disability  
7 insurance benefits show that he reported symptoms of neuropathy in addition to chronic  
8 severe headaches, left lower extremity pain, fatigue, and insomnia. The records include  
9 neurological examinations with no abnormal results. Further, Plaintiff never claimed that  
10 neuropathy prevented him from working. In his application for disability insurance  
11 benefits in this case, Plaintiff claimed that his ability to work was limited by brain injury,  
12 Asperger’s syndrome, pain and joint issues in both ankles, continuous headaches, and  
13 emotional instability. Plaintiff may have new information regarding the cause of his  
14 now-diagnosed neuropathy, but the cause of any medical condition is not material to the  
15 determination of whether before June 30, 2013, he was capable of performing work.  
16 Substantial evidence in the record supports the ALJ’s determination that Plaintiff was not  
17 under a disability as defined in the Social Security Act at any time from July 27, 2010,  
18 through June 30, 2013.

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

22 Dated this 25th day of January, 2016.

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25 Neil V. Wake  
26 United States District Judge  
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