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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Craig Russell,
10 Plaintiff,

No. CV-16-01495-PHX-DLR

ORDER

11 v.

12 Commissioner of Social Security
13 Administration,
14 Defendant.

15
16 Plaintiff Craig Russell applied for a period of disability, disability insurance
17 benefits, and supplemental security income on September 18, 2012, alleging disability
18 beginning December 31, 2008. After state agency denials, Russell appeared for a hearing
19 before an administrative law judge (“ALJ”). A vocational expert also was present and
20 testified. Following the hearing, the ALJ issued a written decision finding that Russell is
21 not disabled within the meaning of the Social Security Act (“SSA”). The ALJ’s decision
22 became the agency’s final decision after the Social Security Administration Appeals
23 Council denied Russell’s request for review. Russell now seeks judicial review of that
24 decision. For the following reasons, the decision of the Commissioner of Social Security
25 Administration is affirmed.

26 **BACKGROUND**

27 To determine whether a claimant is disabled for purposes of the SAA, the ALJ
28 follows a five-step process. 20 C.F.R. § 404.1520(a). At the first step, the ALJ

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

14 At step one, the ALJ found that Russell meets the insured status requirements of
15 the SSA through September 30, 2014, and that he has not engaged in substantial gainful
16 activity since December 31, 2008. (A.R. 22-23.) At step two, the ALJ found that
17 Russell’s affective and substance abuse disorders are severe impairments. (*Id.* at 23.) At
18 step three, the ALJ determined that Russell’s impairments meet or equal the severity of
19 listings 12.04 and 12.09. (*Id.* at 24.) The ALJ also found at step three, however, that
20 Russell would not have an impairment that medically meets or equals the severity of a
21 listed impairment if he stopped his substance use. (*Id.* at 25-26.) The ALJ proceeded to
22 complete the sequential analysis, noting at each step that his findings were contingent
23 upon Russell ceasing his substance use. At step four, the ALJ found that:

24 [Russell] would have the [RFC] to perform a full range of
25 work at all exertional levels but with the following
26 nonexertional limitations: [he] is limited to simple work with
only incidental social contact.

27 (*Id.* at 26.) Based on this RFC, the ALJ found that Russell would be unable to perform
28 his past relevant work. (*Id.* at 30.) At step five, however, after considering Russell’s age,

1 education, work experience, and RFC, the ALJ concluded that there are jobs that exist in
2 significant numbers in the national economy that Russell can perform. (*Id.*)
3 Accordingly, the ALJ concluded that Russell was not disabled within the meaning of the
4 SSA because his substance use is a contributing factor material to the disability
5 determination, and he would not be disabled if he stopped the substance use. (*Id.* at 30-
6 31.)

7 STANDARD OF REVIEW

8 It is not the district court's role to review the ALJ's decision de novo or otherwise
9 determine whether the claimant is disabled. Rather, the court is limited to reviewing the
10 ALJ's decision to determine whether it "contains legal error or is not supported by
11 substantial evidence." *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007). Substantial
12 evidence is more than a scintilla but less than a preponderance, and "such relevant
13 evidence that a reasonable mind might accept as adequate to support a conclusion." *Id.*
14 "Where evidence is susceptible to more than one rational interpretation, the ALJ's
15 decision should be upheld." *Id.* The court, however, "must consider the entire record as
16 a whole and may not affirm simply by isolating a 'specific quantum of supporting
17 evidence.'" *Id.* Nor may the court "affirm the ALJ on a ground upon which he did not
18 rely." *Id.*

19 DISCUSSION

20 Russell argues that the ALJ improperly found that his: (1) substance use was
21 material to the disability determination; (2) back pain and sleep apnea were not severe;
22 and (3) limitations allowed him to work in jobs with only incidental social contact,
23 without defining the term. (Doc. 9.) Having reviewed the record and the parties' briefs,
24 the Court finds no reversible error.

25 **I. Substance Use as a Material Contributing Factor**

26 The ALJ found that Russell's affective and substance abuse disorders were severe,
27 and that while on methamphetamine his impairments met listings 12.04 and 12.09.
28 Because drug abuse cannot be a material factor in the ALJ's disability determination, the

1 ALJ then re-analyzed Russell’s impairments at step three as if he had stopped using
2 methamphetamine. This time, the ALJ concluded that Russell’s impairments did not
3 meet or equal a listed impairment. The ALJ also concluded that, if not on drugs, Russell
4 would be able to perform simple work with incidental social contact and that such jobs
5 exist in significant numbers in the national economy.

6 Agency regulations provide that “[a]n individual shall not be considered to be
7 disabled . . . if alcoholism or drug addiction would . . . be a contributing factor material to
8 the Commissioner’s determination that the individual is disabled.” 42 U.S.C. §
9 423(d)(2)(c). In order “[t]o find that [drug abuse] is material, we must have evidence in
10 the case record demonstrating that any remaining limitations [when not using drugs] were
11 not disabling during the period.” SSR 13-2p, 2013 WL 621536, at *12. “Especially in
12 cases involving co-occurring mental disorders, the documentation of a period of
13 abstinence should provide information about what, if any, medical findings and
14 impairment-related limitations remained after the acute effects of drug and alcohol use
15 abated.” *Id.*

16 The ALJ highlighted such evidence here. The ALJ separately compared the
17 effects of Russell’s symptoms during periods of sobriety and relapse and found that he
18 had fewer and less severe limitations during periods of sobriety. (A.R. at 26.) This
19 finding is supported by substantial evidence. For example, during periods of sobriety
20 Russell’s mental status examinations were unremarkable. (*See, e.g., id.* at 319, 325, 329,
21 432-45, 506-23 (noting that Plaintiff had normal speech and thought process, gave full
22 attention, normal concentration, intact memory, and unimpaired insight and judgment).)
23 In contrast, during a period of relapse, Russell’s thought process was disorganized, his
24 insight and judgment were poor, his attention was poor, his mood was “off the wall,” and
25 his speech was difficult to understand. (*Id.* at 356-59.) The ALJ reasonably concluded
26 that the notes from periods of sobriety reflect Russell’s functioning when not using
27 methamphetamine, while the notes that coincided with Russell’s relapse reflect his
28 functioning when he is using the drug. Based on the evidence and the ALJ’s sequential

1 evaluation findings when Russell’s substance use was not considered, the ALJ reasonably
2 concluded that Russell’s drug use would be material to a finding of disability.

3 **II. Severity of Sleep Apnea and Back Pain (Disc Disease)**

4 The step two inquiry is a *de minimis* screening device to dispose of groundless
5 claims. *Bowen v. Yuckert*, 482 U.S. 137, 153-54 (1987). Agency regulations provide that
6 “[a]n impairment or combination of impairments is not severe if it does not significantly
7 limit a claimant’s physical or mental ability to do basic work activities.” 20 C.F.R. §§
8 404.1521(a), 416.921(a). Basic work activities are “the abilities and aptitudes necessary
9 to do most jobs,” including: (1) physical functions such as walking, standing, sitting,
10 lifting, and carrying; (2) capacities for seeing, hearing, and speaking; (3) understanding,
11 carrying out, and remembering simple instructions; (4) use of judgment; (5) responding
12 appropriately to supervision, co-workers, and usual work situations; and (6) dealing with
13 changes in a routine work setting. 20 C.F.R. §§ 404.1521(b), 416.921(b). “[A]n ALJ
14 may find that a claimant lacks a medically severe impairment or combination of
15 impairments only when his conclusion is ‘clearly established by medical evidence.’”
16 *Webb v. Barnhart*, 433 F.3d 683, 687 (9th Cir. 2005).

17 Russell was diagnosed with sleep apnea in August 2014. (A.R. at 578.) The ALJ
18 found Russell’s sleep apnea not severe at step two because Russell admittedly did not
19 comply with his prescribed treatment for the condition. (*Id.* at 23, 43-44.) The ALJ
20 reasonably concluded that Russell would have complied with his prescribed treatment if
21 his sleep apnea was as severely limiting as he alleged. *See Tonapetyan v. Halter*, 242
22 F.3d 1144, 1147-48 (9th Cir. 2001).

23 Regarding his back pain, Russell contends that the ALJ neglected to consider a
24 November 2013 x-ray, which showed “marked” disc disease with grade I-II
25 spondylolisthesis. (A.R. 553.) But the record shows that the ALJ considered the results
26 of this x-ray, as his decision both cites to and quotes from the x-ray results. (A.R. 23.)
27 Notably, the ALJ highlighted language from that x-ray stating, “there is no instability
28 with flexion or extension.” (*Id.*) This language served as the basis for the ALJ’s finding

1 that Russell’s disc disease was not severely limiting. *See, e.g., Burch v. Barnhart*, 400
2 F.3d 676, 681 (9th Cir. 2005) (recognizing that an ALJ’s interpretation of objective
3 imaging, i.e., an MRI, is a legitimate basis for a nondisability finding). Moreover, Russell
4 fails to connecting the results of his x-ray with limitations on work activities. The Court
5 finds no step two error.

6 **III. Incidental Social Contact**

7 Finally, Russell argues that the phrase “incidental social contact” as used in the
8 ALJ’s RFC finding is ambiguous. He contends that, without clarity as to the amount of
9 public contact Russell can have, it is not possible to assess what jobs are available to him.
10 The Court disagrees.

11 The ALJ defined the term “incidental social contact” during the hearing. In his
12 hypothetical posed to the VE, the ALJ asked whether someone limited to work
13 “involving no more than incidental contact,” meaning “not much with the public and not
14 having to really interact on any extensive basis with coworkers or supervisors,” could
15 perform jobs that exist in the national economy. (A.R. 60.) In response, the VE
16 identified kitchen helper, hand packager, dining room attendant, and housekeeper. (*Id.* at
17 60-61, 64.) The VE acknowledged that a dining room attendant worked around many
18 people, but explained that “contact with them is just incidental because you’re focused on
19 cleaning empty tables.” (*Id.* at 62.) The VE also acknowledged that kitchen helpers and
20 hand packagers do not work alone, but explained that these jobs required only incidental
21 contact with others. (*Id.* at 64.) Likewise, housekeepers have “very little contact with
22 others.” (*Id.*) Accordingly, the ALJ sufficiently defined “incidental social contact” to
23 properly assess the jobs Russell could perform.

24 **CONCLUSION**

25 For the foregoing reasons, the ALJ’s decision is free of harmful legal error and
26 supported by substantial evidence.

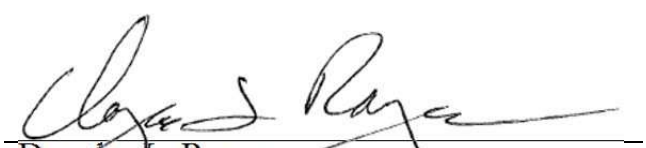
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IT IS ORDERED that the final agency decision is **AFFIRMED**. The Clerk shall enter judgment accordingly and terminate this case.

Dated this 30th day of September, 2017.



Douglas L. Rayes
United States District Judge