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

9 Jose Daniel Torres, Jr.,

10 Plaintiff,

11 v.

12 Commissioner of Social Security
13 Administration,

14 Defendant.

No. CV-20-00558-PHX-JAT

ORDER

15 Pending before the Court is Plaintiff Jose Daniel Torres, Jr.’s appeal of his denial of
16 social security disability benefits. The appeal is fully briefed (Docs. 14, 15, 16), and the
17 Court now rules.

18 **I. BACKGROUND**

19 Plaintiff was 44 years old at the time of his hearing. (AR 40). He completed high
20 school and two years of college education. (*Id.* at 186) Plaintiff has past relevant work
21 experience as an infantryman, sheriff’s deputy, corrections officer, security manager, and
22 armored car driver. (*Id.* at 26). Plaintiff suffers from “minimal cervical and lumbar
23 degenerative disc disease, post-traumatic stress disorder (‘PTSD’) and major depressive
24 disorder.” (*Id.* at 17).

25 On September 3, 2015, Plaintiff filed an application for Social Security Disability
26 Insurance benefits for a disability beginning on December 1, 2014. (*Id.* at 14). The Social
27 Security Administration denied Plaintiff’s application initially on May 2, 2016 and upon
28 reconsideration on December 28, 2016. (*Id.*). On December 12, 2018, an Administrative

1 Law Judge issued a decision finding Plaintiff not disabled and denied the application. (*Id.*
2 at 14–20). Plaintiff’s request for review was denied by the Social Security Administration
3 Appeals Council on January 17, 2020. (*Id.* at 1–3). Plaintiff now appeals the ALJ’s final
4 decision. (Doc. 14).

5 **II. LEGAL STANDARD**

6 The ALJ’s decision to deny disability benefits may be overturned “only when the
7 ALJ’s findings are based on legal error or not supported by substantial evidence in the
8 record.” *Benton ex rel. Benton v. Barnhart*, 331 F.3d 1030, 1035 (9th Cir. 2003).
9 “‘Substantial evidence’ means more than a mere scintilla, but less than a preponderance,
10 i.e., such relevant evidence as a reasonable mind might accept as adequate to support a
11 conclusion.” *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006) (citing *Young*
12 *v. Sullivan*, 911 F.2d 180, 183 (9th Cir. 1990)).

13 “The inquiry here is whether the record, read as a whole, yields such evidence as
14 would allow a reasonable mind to accept the conclusions reached by the ALJ.” *Gallant v.*
15 *Heckler*, 753 F.2d 1450, 1453 (9th Cir. 1984) (citation omitted). “Where evidence is
16 susceptible of more than one rational interpretation, it is the ALJ’s conclusion which must
17 be upheld; and in reaching his findings, the ALJ is entitled to draw inferences logically
18 flowing from the evidence.” *Id.* (citations omitted); *see Batson v. Comm’r of Soc. Sec.*
19 *Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004). This is because “[t]he trier of fact and not
20 the reviewing court must resolve conflicts in the evidence, and if the evidence can support
21 either outcome, the court may not substitute its judgment for that of the ALJ.” *Matney v.*
22 *Sullivan*, 981 F.2d 1016, 1019 (9th Cir. 1992); *see Benton*, 331 F.3d at 1035 (“If the
23 evidence can support either outcome, the Commissioner’s decision must be upheld.”).

24 The ALJ is responsible for resolving conflicts in medical testimony, determining
25 credibility, and resolving ambiguities. *See Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th
26 Cir. 1995). Thus, if on the whole record before the Court, substantial evidence supports the
27 ALJ’s decision, the Court must affirm it. *See Hammock v. Bowen*, 879 F.2d 498, 501 (9th
28 Cir. 1989); *see also* 42 U.S.C. § 405(g). On the other hand, the Court “may not affirm

1 simply by isolating a specific quantum of supporting evidence.” *Orn v. Astrue*, 495 F.3d
2 625, 630 (9th Cir. 2007) (quotation omitted). The Court is not charged with reviewing the
3 evidence and making its own judgment as to whether Plaintiff is or is not disabled. *See*
4 *Connett v. Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003). Rather, the Court’s inquiry is
5 constrained to the reasons asserted by the ALJ and the evidence relied upon in support of
6 those reasons. *See id.*

7 **a. Definition of Disability**

8 To qualify for disability benefits under the Social Security Act, a claimant must
9 show, among other things, that he is “under a disability.” 42 U.S.C. § 423(a)(1)(E). The
10 Social Security Act defines “disability” as the “inability to engage in any substantial gainful
11 activity by reason of any medically determinable physical or mental impairment which can
12 be expected to result in death or which has lasted or can be expected to last for a continuous
13 period of not less than 12 months.” *Id.* § 423(d)(1)(A). A person is “under a disability only
14 if his physical or mental impairment or impairments are of such severity that he is not only
15 unable to do his previous work but cannot, considering his age, education, and work
16 experience, engage in any other kind of substantial gainful work which exists in the
17 national economy.” *Id.* § 423(d)(2)(A).

18 **b. Five-Step Evaluation Process**

19 The Social Security regulations set forth a five-step sequential process for
20 evaluating disability claims. 20 C.F.R. § 404.1520; *see also Reddick v. Chater*, 157 F.3d
21 715, 721 (9th Cir. 1998) (describing the sequential process). A finding of “not disabled” at
22 any step in the sequential process will end the ALJ’s inquiry. 20 C.F.R. § 404.1520(a)(4).
23 The claimant bears the burden of proof at the first four steps, but the burden shifts to the
24 ALJ at the final step. *Reddick*, 157 F.3d at 721. The five steps are as follows:

25 First, the ALJ determines whether the claimant is “doing substantial gainful
26 activity.” 20 C.F.R. § 404.1520(a)(4)(i). If so, the claimant is not disabled.

27 Second, if the claimant is not gainfully employed, the ALJ next determines whether
28 the claimant has a “severe medically determinable physical or mental impairment.” 20

1 C.F.R. § 404.1520(a)(4)(ii). A severe impairment is one that “significantly limits [the
2 claimant’s] physical or mental ability to do basic work activities.” *Id.* § 404.1520(c). Basic
3 work activities mean the “abilities and aptitudes to do most jobs.” *Id.* § 404.1521(b).
4 Further, the impairment must either be expected “to result in death” or “to last for a
5 continuous period of twelve months.” *Id.* § 404.1509 (incorporated by reference in 20
6 C.F.R. § 404.1520(a)(4)(ii)). The “step-two inquiry is a de minimis screening device to
7 dispose of groundless claims.” *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996).

8 Third, having found a severe impairment, the ALJ next determines whether the
9 impairment “meets or equals” one of the impairments specifically listed in the regulations.
10 *Id.* § 404.1520(a)(4)(iii). If so, the claimant is found disabled without considering the
11 claimant’s age, education, and work experience. *Id.* § 404.1520(d). Before proceeding to
12 step four, the ALJ must assess the claimant’s “residual functional capacity” (RFC). *Id.* §
13 404.1520(a)(4). The RFC represents the most a claimant “can still do despite [her]
14 limitations.” *Id.* § 404.1545(a)(1). In assessing the claimant’s RFC, the ALJ will consider
15 the claimant’s “impairment(s), and any related symptoms, such as pain, [that] may cause
16 physical and mental limitations that affect what [the claimant] can do in a work setting.”
17 *Id.*

18 At step four, the ALJ determines whether, despite the impairments, the claimant can
19 still perform “past relevant work.” *Id.* § 404.1520(a)(4)(iv). To make this determination,
20 the ALJ compares its “residual functional capacity assessment . . . with the physical and
21 mental demands of [the claimant’s] past relevant work.” *Id.* § 404.1520(f). If the claimant
22 can still perform the kind of work the claimant previously did, the claimant is not disabled.
23 Otherwise, the ALJ proceeds to the final step.

24 At the fifth and final step, the ALJ determines whether the claimant “can make an
25 adjustment to other work” that exists in the national economy. *Id.* § 404.1520(a)(4)(v). In
26 making this determination, the ALJ considers the claimant’s residual functional capacity,
27 together with vocational factors (age, education, and work experience). *Id.*
28 § 404.1520(g)(1). If the claimant can make an adjustment to other work, then he is not

1 disabled. If the claimant cannot perform other work, he will be found disabled. As
2 previously noted, the ALJ has the burden of proving the claimant can perform other
3 substantial gainful work that exists in the national economy. *Reddick*, 157 F.3d at 721.

4 **c. ALJ’s Evaluation Under the Five-Step Process**

5 Here, at step one, the ALJ concluded that Plaintiff had not engaged in substantial
6 gainful activity since his alleged disability onset date, December 1, 2014. (AR 16). At step
7 two, the ALJ determined that Plaintiff suffered from the following severe impairments:
8 post-traumatic stress disorder, major depressive disorder, and minimal cervical and lumbar
9 degenerative disc disorder. (*Id.* at 17). At step three, the ALJ concluded that Plaintiff’s
10 impairments did not meet the severity of a listed impairment in 20 C.F.R. Part 404, Subpart
11 P, Appendix 1. (*Id.* at 18). At step four, the ALJ determined that Plaintiff had a residual
12 functional capacity to perform medium work but concluded that Plaintiff would be unable
13 to perform any of his past relevant work. (*Id.* at 19, 26). Finally, at step five, the ALJ found
14 that Plaintiff was not disabled because he could perform jobs that existed in significant
15 numbers in the national economy—such as a laundry worker, hand packager, or
16 merchandise marker. (*Id.* at 27).

17 **III. ANALYSIS**

18 Plaintiff argues that the ALJ erred by (1) rejecting Plaintiff’s symptom testimony,
19 (2) assigning “little weight” to the opinion of Plaintiff’s treating physician, and (3)
20 assigning “great weight” to the opinion of a state agency reviewing physician. (Doc. 14.).
21 The Court addresses each in turn.

22 **a. Symptom Testimony**

23 Plaintiff first argues that the ALJ erred by rejecting Plaintiff’s symptom testimony
24 without “specific, clear, and convincing reasons supported by substantial evidence” in the
25 record. (*Id.* at 16). Specifically, Plaintiff argues that the ALJ failed to explicitly connect
26 the objective medical evidence cited in the record to Plaintiff’s subjective testimony and
27 did not find that a substantial part of Plaintiff’s usual day was spent doing activities
28 inconsistent with his alleged limitations. (*Id.* at 18, 20).

1 The ALJ must engage in a two-step analysis to determine whether a plaintiff's
2 symptom testimony is credible. First, the plaintiff must present "objective medical
3 evidence of an underlying impairment which could reasonably be expected to produce the
4 pain or other symptoms alleged." *Garrison v. Colvin*, 759 F.3d 995, 1014 (9th Cir. 2014)
5 (quotation omitted). If the plaintiff produces such evidence, the ALJ cannot discredit the
6 plaintiff's symptom testimony "solely because the degree of pain alleged by the [plaintiff]
7 is not supported by objective medical evidence." *Orteza v. Shalala*, 50 F.3d 748, 749–750
8 (9th Cir. 1995). Rather, the ALJ must offer "specific, clear and convincing reasons" for
9 rejecting the symptom testimony. *Garrison*, 759 F.3d at 1015.

10 The ALJ found that Plaintiff's medically determinable impairments could
11 reasonably be expected to cause some of Plaintiff's alleged symptoms. (AR 20). However,
12 the ALJ concluded that Plaintiff's "statements concerning the intensity, persistence and
13 limiting effects," of some of the alleged symptoms were not "entirely consistent with the
14 medical evidence and other evidence in the record for the reasons explained throughout
15 [the] decision." (*Id.*).

16 The Court finds that the ALJ provided specific, clear, and convincing reasons for
17 rejecting Plaintiff's symptom testimony. When determining the credibility of a plaintiff's
18 symptom testimony, an ALJ can consider the following factors, including but not limited
19 to: the plaintiff's "reputation for truthfulness, inconsistencies either in [plaintiff's]
20 testimony or between [the plaintiff's] testimony and conduct, [his] daily activities, [his]
21 work record, and testimony from physicians and third parties concerning the nature,
22 severity, and effect of the [alleged] symptoms." *Thomas v. Barnhart*, 278 F.3d 947, 958–
23 59 (9th Cir. 2002).

24 After considering the factors above, the ALJ reasoned that Plaintiff's subjective
25 symptom testimony was inconsistent with the objective medical evidence in the record.
26 (*Id.*); *see also Thomas*, 278 F.3d at 960 (an ALJ cannot not reject a plaintiff's symptom
27 testimony solely because the objective medical evidence is inconsistent with the alleged
28 limitations, however, the ALJ may properly reject the testimony "by using ordinary

1 techniques of credibility evaluation” to determine the testimony was not credible (quotation
2 omitted)). Substantial evidence supports the ALJ’s conclusion. For example, Plaintiff
3 claimed that he experiences pain and walks with a limp, but Plaintiff’s exams yielded
4 normal findings that “d[id] not show this level of discomfort or similar complaints.” (AR
5 20). The evidence also showed Plaintiff was “generally doing well when adhering to
6 treatment.” (*Id.* at 21–22); *see Bunnell v. Sullivan*, 947 F.2d 341, 346 (9th Cir. 1991) (when
7 determining plaintiff’s credibility, the ALJ must consider the “type, dosage, effectiveness,
8 and adverse side-effects” of treatment). Specifically, Plaintiff reported that Cymbalta
9 helped his depression and Hydroxyzine worked “okay” for his anxiety. (AR 21). Both
10 Plaintiff and his wife confirmed that he had improved from treatment and that his panic
11 attacks and depression were manageable. (*Id.*). The ALJ also considered the reports of
12 various physicians that evidenced that Plaintiff’s “physical exams were generally
13 unremarkable overall.” (*Id.* at 22).

14 Further, the ALJ reasoned that Plaintiff’s daily activities were inconsistent with the
15 severity of Plaintiff’s alleged limitations. (*Id.* at 20). Plaintiff reported riding his
16 motorcycle, doing household chores, taking his children to Disneyland, exercising,
17 working on cars, spending time with family, and occasionally attending his daughter’s
18 extra-curricular activities. (*Id.*). The ALJ reasoned that Plaintiff’s ability to ride his
19 motorcycle showed “far more concentration and ability to go into public than he asserted.”
20 (*Id.*); *see Garrison*, 759 F.3d at 1016 (stating that Plaintiff’s daily activities impact his
21 credibility if the activity level is inconsistent with Plaintiff’s alleged limitations). In terms
22 of the level of Plaintiff’s capabilities, the ALJ stated that Plaintiff “tr[ies] to do chores” and
23 cleans “as he can.” (*Id.*). *See Shaw v. Berryhill*, No. 6:16-CV-02188-PK, 2018 WL
24 1406601, at 9 (D. Or. Jan. 23, 2018) (stating that the plaintiff’s continued engagement in
25 an activity that challenges him “demonstrates that he is capable of accomplishing
26 challenging tasks despite his limitations, and indicates capacities transferable to the
27 workplace”); *id.* (noting that there was no evidence that the plaintiff required assistance
28 from others in completing the daily activities). Finally, although Plaintiff testified that he

1 stopped many of the activities recently, the evidence in the record supports that Plaintiff
2 had been improving with treatment over the past year. (AR 21). Accordingly, the ALJ
3 properly rejected Plaintiff’s symptom testimony by providing specific, clear, and
4 convincing reasons for determining that the testimony was not credible.

5 **b. Treating Psychiatrist’s Assessment**

6 Next, Plaintiff argues that the ALJ erred by rejecting the assessment provided by
7 Plaintiff’s treating psychiatrist, Paul Valbuena, without specific and legitimate reasons for
8 doing so based on substantial evidence in this record. (Doc. 14 at 9–16). The ALJ assigned
9 “little weight” to Dr. Valbuena’s opinion because Dr. Valbuena did not cite specific
10 treatment records to support his opinion and “his own treatment records d[id] not support
11 the degree of limitations proposed [in his opinion].” (AR 23). Plaintiff specifically argues
12 that the ALJ improperly relied on Dr. Valbuena’s lack of citations when rejecting his
13 opinion and relied on “treatment record findings that were either inconsistent or irrelevant”
14 to Plaintiff’s condition. (Doc. 14 at 11; AR 23).

15 The opinion of a plaintiff’s treating physician is afforded “controlling weight” so
16 long as it is supported by medically acceptable diagnostic techniques and is consistent with
17 the other substantial evidence in the plaintiff’s record. *Trevizo v. Berryhill*, 871 F.3d 664,
18 645 (9th Cir. 2017). Although the opinion of a treating physician is entitled to substantial
19 weight, the ALJ can reject a physician’s uncontradicted opinion with “clear and convincing
20 reasons that are supported by substantial evidence.” *Id.* If the treating physician’s opinion
21 is contradicted by another physician’s opinion, however, the ALJ must provide “specific
22 and legitimate reasons [for rejecting the opinion] that are supported by substantial
23 evidence.” *Id.*

24 Contrary to Plaintiff’s assertion that the ALJ is not qualified to analyze medical
25 evidence, an ALJ “is responsible for determining credibility, resolving conflicts in medical
26 testimony, and for resolving ambiguities.” (Doc. 14 at 14). *Tomasetti v. Astrue*, 533 F.3d
27 1035, 1041 (9th Cir. 2008). When determining the weight to give a treating physician’s
28 opinion, the ALJ must consider factors such as the length of the treatment relationship and

1 frequency of examination; the nature and extent of the treatment relationship; the
2 supportability and consistency of the opinion; the physician’s specialization; and any other
3 relevant factors. 20 C.F.R. 404.1527(c).

4 Here, the ALJ provided “specific and legitimate” reasons for assigning “little
5 weight” to Dr. Valbuena’s medical source statement. Although not expressly stated, the
6 ALJ’s decision demonstrates that he considered the relevant factors set forth in 20 C.F.R.
7 404.1527(c) when weighing Dr. Valbuena’s opinion. *See Kelly v. Berryhill*, 732 Fed.
8 App’x 558, 562 n.4 (9th Cir. 2018) (the ALJ “is not required to make an express statement
9 that [h]e considered all the factors” (quotation omitted)). The ALJ discussed the nature and
10 length of the treatment relationship, noting that Dr. Valbuena was Plaintiff’s treating
11 physician who conducted mental status exams on Plaintiff from December 22, 2015 to
12 March 15, 2016. (AR 21, 23). *See* 20 C.F.R. 404.1527(c)(2)(i)–(ii). He also acknowledged
13 that Dr. Valbuena specialized as a psychiatrist. (AR 26). *See* 20 C.F.R. 404.1527(c)(5).
14 Additionally, the ALJ considered the supportability and consistency of Dr. Valbuena’s
15 opinion on Plaintiff’s limitations. (AR 23). *See* 20 C.F.R. 404.1527(3)–(4).

16 In his opinion, Dr. Valbuena concluded that Plaintiff’s impairments prevented him
17 from completing an 8-hour workday, but Plaintiff’s treatment records showed that
18 Plaintiff’s mental status exams from Valbuena Psychiatry were generally normal. (AR 23).
19 The ALJ summarized the conflicting clinical evidence from Plaintiff’s mental status
20 exams, noting that: Plaintiff’s appearance was unremarkable; his speech, memory,
21 judgment, insight and associations were intact; his was behavior appropriate; his attention
22 span was normal; his thinking was “basically logical;” and he did not exhibit cognitive
23 difficulty, suicidal ideals or intentions, hallucinations or delusions. (*Id.*). Accordingly, the
24 ALJ found that Dr. Valbuena failed to cite to specific treatment records to support his
25 opinion and that the opinion was inconsistent with Dr. Valbuena’s own treatment records.
26 (*Id.*). Thus, the ALJ satisfied the “specific and legitimate” standard when assigning “little
27 weight” to Dr. Valbuena’s opinion. *See Trevizo*, 871 F.3d at 665 (the ALJ can meet the
28 specific and legitimate standard by summarizing the facts and conflicting clinical evidence

1 in detail, stating his own interpretation of the facts and evidence, and making findings
2 accordingly).

3 **c. Reviewing Physician Assessment**

4 Finally, Plaintiff contends that the ALJ erred by assigning “great weight” to the
5 opinion of state agency reviewing physician, Daniel Gross, Psy.D, who did not examine
6 Plaintiff or review the entire medical record. (Doc. 14 at 9; AR 26). Because treating
7 physicians’ opinions are generally given greater weight than all other medical source
8 opinions, *Garrison*, 759 F.3d at 1012, Plaintiff argues that the ALJ gave too much weight
9 to Dr. Gross’s opinion. (Doc. 14 at 9). Further, Plaintiff argues that Dr. Gross’s opinion did
10 not serve as substantial evidence, on its own, to support the ALJ’s finding that Plaintiff is
11 not disabled. (*Id.* at 10).

12 The conflicting opinion of a non-treating or non-examining physician can serve as
13 substantial evidence for the ALJ to reject a treating physician’s opinion if the opinion is
14 “consistent with independent clinical findings or other evidence in the record.” *Thomas*,
15 278 F.3d at 957. On the other hand, the ALJ must provide specific and legitimate reasons
16 for rejecting the treating physicians opinion, based on substantial evidence in the record, if
17 the “nontreating source’s opinion contradicts that of the treating physician but is not based
18 on independent clinical findings, or rests on clinical findings also considered by the treating
19 physician.” *Andrews*, 53 F.3d at 1041.

20 The ALJ assigned “great weight” to the opinion of state agency consultant, Daniel
21 Gross—who opined that Plaintiff could perform certain work-related functions—because
22 “the medical evidence does not support greater restrictions.” (AR 26). Because Dr. Gross’s
23 opinion was based on a partial review of the record, rather than on independent findings,
24 the ALJ had to meet the “specific and legitimate” standard for rejecting a treating
25 physician’s opinion. (Doc. 11-4, Exhibit 4A). For the reasons discussed above, the ALJ
26 provided specific and legitimate reasons for assigning “little weight” to Dr. Valbuena’s
27 opinion, based on substantial evidence in the record that showed inconsistencies between
28 his treatment findings and conclusions. *See Orn*, 495 F.3d at 632 (stating that an

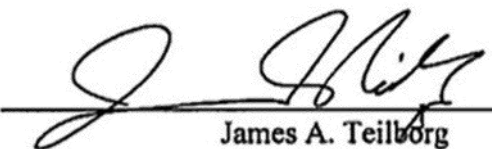
1 “examining physician’s independent clinical findings may be substantial evidence”). Thus,
2 the ALJ did not err by assigning “great weight” to Dr. Gross’s opinion.

3 **IV. CONCLUSION**

4 Based on the foregoing,

5 **IT IS ORDERED** that the ALJ decision is **AFFIRMED**. The Clerk of Court shall
6 enter judgment accordingly.

7 Dated this 26th day of April, 2021.

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12 James A. Teilborg
13 Senior United States District Judge
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