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

9 Gregory F Osterloh,

10 Plaintiff,

11 v.

12 Commissioner of Social Security
13 Administration,

14 Defendant.

No. CV-16-08117-PCT-JAT

ORDER

15 Pending before the Court is Plaintiff's appeal of the denial of his social security
16 disability benefits.

17 **I. Review of Administrative Law Judge's Decision**

18 The Administrative Law Judge's ("ALJ") decision to deny benefits will be
19 overturned "only if it is not supported by substantial evidence or is based on legal error."
20 *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989) (quotation omitted).
21 "Substantial evidence" means more than a mere scintilla, but less than a preponderance.
22 *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1998).

23 "The inquiry here is whether the record, read as a whole, yields such evidence as
24 would allow a reasonable mind to accept the conclusions reached by the ALJ." *Gallant v.*
25 *Heckler*, 753 F.2d 1450, 1453 (9th Cir. 1984) (citation omitted). In determining whether
26 there is substantial evidence to support a decision, the Court considers the record as a
27 whole, weighing both the evidence that supports the ALJ's conclusions and the evidence
28 that detracts from the ALJ's conclusions. *Reddick*, 157 F.3d at 720. "Where evidence is

1 susceptible of more than one rational interpretation, it is the ALJ's conclusion which
2 must be upheld; and in reaching his findings, the ALJ is entitled to draw inferences
3 logically flowing from the evidence." *Gallant*, 753 F.2d at 1453 (citations omitted); *see*
4 *Batson v. Comm'r of the Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004). This is
5 because "[t]he trier of fact and not the reviewing court must resolve conflicts in the
6 evidence, and if the evidence can support either outcome, the court may not substitute its
7 judgment for that of the ALJ." *Matney v. Sullivan*, 981 F.2d 1016, 1019 (9th Cir. 1992);
8 *see also Young v. Sullivan*, 911 F.2d 180, 184 (9th Cir. 1990).

9 The ALJ is responsible for resolving conflicts in medical testimony, determining
10 credibility, and resolving ambiguities. *See Andrews v. Shalala*, 53 F.3d 1035, 1039
11 (9th Cir. 1995). Thus, if on the whole record before the Court, substantial evidence
12 supports the ALJ's decision, the Court must affirm it. *See Hammock v. Bowen*, 879 F.2d
13 498, 501 (9th Cir. 1989); *see also* 42 U.S.C. § 405(g) (2012). On the other hand, the
14 Court "may not affirm simply by isolating a specific quantum of supporting evidence."
15 *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007) (quotation and citation omitted).

16 Finally, the Court is not charged with reviewing the evidence and making its own
17 judgment as to whether Plaintiff is or is not disabled. Rather, the Court's inquiry is
18 constrained to the reasons asserted by the ALJ and the evidence relied on in support of
19 those reasons. *See Connett v. Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003).

20 **II. Claims of Error on Appeal**

21 Although Plaintiff purports to have four claims of error on appeal, within his brief
22 he raises various sub-arguments. The Court has attempted to discern the exact claims
23 Plaintiff is bringing and the headings below reflect what the Court believes to be the
24 claims.

25 **A. Plaintiff's Treatment Records**

26 Plaintiff claims the ALJ erred in "finding that Plaintiff's psychological treatment
27 was inadequate in light of the severity of his condition." (Doc. 20 at 3). However, the
28 ALJ did not make this finding. Instead, the ALJ found, "The claimant has not generally

1 received the type of psychiatric treatment one would expect if the limitations imposed by
2 the claimant's impairments were as broad and limiting as the claimant alleges." (Doc.
3 15-3 at 28).¹

4 Thus, the ALJ was not making a medical determination that the Plaintiff had
5 inadequate treatment. Instead, the ALJ found that Plaintiff's claimed symptoms were
6 inconsistent with Plaintiff's known treatment history; thereby calling into question the
7 veracity of Plaintiff's symptom testimony.² Failing to seek treatment is a valid reason to
8 discredit Plaintiff's symptom testimony. *Tommasetti v. Astrue*, 533 F.3d 1035, 1039
9 (9th Cir. 2008). Accordingly, the Court finds no error regarding the ALJ's observations
10 about Plaintiff's treatment history.

11 **B. Thoroughness of the ALJ's Decision**

12 Plaintiff claims the ALJ's decision was inadequate because it was boilerplate and
13 arbitrary. (Doc. 20 at 3). More specifically, Plaintiff complains that the ALJ did not
14 adequately explain why Plaintiff's routine and conservative treatment since October of
15 2012 for his claimed psychological disorders diminished Plaintiff's credibility. However,
16 in the decision, the ALJ spent an entire paragraph discussing why Plaintiff's treatment
17 history was inconsistent with the severity of the disability he claims to have. (Doc. 15-3
18 at 28). This paragraph was specific to Plaintiff's personal medical history. (*Id.*). The
19 Court finds no error regarding the thoroughness of the ALJ's discussion of Plaintiff's
20 treatment history.

23 ¹ The page numbers used are the numbers from this Court's record.

24 ² In his reply, Plaintiff argues that the medications he was taking were very
25 strong, which Plaintiff argues shows significant treatment. However, to support that
26 these medications were in fact strong, Plaintiff cites this Court to a variety of internet
27 medical sources such as everydayhealth.com, healthline.com, and news-medical.net.
28 (Doc. 25 at 4). From a medical perspective, the Court is unclear about the reliability of
these sources. Regardless, however, this Court is not in a position, procedurally, to
reevaluate the medical evidence of record against new medical sources. *See Matney*, 981
F.2d at 1019. Accordingly, the Court will not reweigh the evidence.

1 **C. Whether the ALJ Correctly Considered Plaintiff’s Off-Task Time**

2 Plaintiff does not dispute the ALJ’s calculation regarding the amount of time
3 Plaintiff would miss from work. However, Plaintiff argues that using the limitations the
4 ALJ found regarding Plaintiff’s focus at work, Plaintiff would not be employable. (Doc.
5 20 at 4-5).

6 Based on the limitations the ALJ found regarding Plaintiff’s focus, to which
7 Plaintiff does not object on appeal, the ALJ asked a vocational expert whether there were
8 jobs in the national economy that Plaintiff could perform. (Doc. 15-3 at 31-32). The
9 vocational expert testified that there were several jobs Plaintiff could perform. (*Id.*). The
10 Court finds the ALJ did not err in relying on the testimony of the vocational expert, who
11 properly considered Plaintiff’s limitations. *See generally Lockwood v. Comm’r Soc. Sec.*
12 *Admin.*, 616 F.3d 1068, 1071 (9th Cir. 2010) (the agency can show that work exists in the
13 national economy for a particular claimant by taking the testimony of a vocational
14 expert); *Osenbrock v. Apfel*, 240 F.3d 1157, 1162-63 (9th Cir. 2001) (holding it was
15 appropriate for the ALJ to rely on the vocational expert’s testimony).

16 **D. The ALJ’s Consideration of Plaintiff’s Mental RFC Assessment**

17 Plaintiff argues the ALJ erred by only discussing some, but not all of Plaintiff’s
18 Mental Residual Functional Capacity (“RFC”) assessment. (Doc. 20 at 5). Specifically,
19 Plaintiff argues that it was error for the ALJ to acknowledge Plaintiff would be off-task
20 5% of the time and miss two days of work per month, but only make, “passing mention
21 of the limitations in the Mental RCF Assessment, and [fail] to address the majority of the
22 moderate limitations in the Assessment....” (Doc. 20 at 5).

23 First, the Court notes that Plaintiff acknowledges that the ALJ considered and
24 discussed the Mental RCF assessment. Thus, it is clear the ALJ did not ignore this
25 evidence. Second, Plaintiff cites nothing that requires the ALJ to mention every line of
26 every piece of evidence to avoid error. Accordingly, because the ALJ clearly considered
27 this evidence, and incorporated certain limitations consistent with this evidence, the
28 Court finds the ALJ did not commit error with respect to his consideration of the Mental

1 RFC assessment.

2 **E. The ALJ's Consideration of Plaintiff's GAF Scores**

3 Plaintiff argues that the ALJ did not give enough weight to his GAF scores. (Doc.
4 20 at 6). First, the Court notes, and Plaintiff acknowledges, that the ALJ was aware of
5 the GAF scores and specifically mentioned the GAF scores (albeit giving them little
6 weight). (Doc. 20 at 6).

7 Second, Plaintiff cites no law that requires the ALJ to give a specific amount of
8 weight to these score, or requires the ALJ to give a detailed explanation for not giving
9 high weight to this evidence. Instead, Plaintiff appears to seek to have this Court
10 consider the GAF scores, give them high weight, and reverse on this basis. However, as
11 discussed above, it is not this Court's function to weigh the evidence, and this Court
12 cannot substitute its judgment for the judgment of the ALJ. *Matney*, 981 F.2d at 1019.

13 Moreover, Defendant cites case law finding that GAF scores are not binding on
14 the ALJ. (Doc. 24 at 8 (citing *McFarland v. Astrue*, 288 Fed. Appx 357, 359 (9th Cir.
15 2008) (citing 65 Fed. Reg. 50746, 50764-50765) (Aug. 21, 2000)). Accordingly, the
16 Court finds that the ALJ did not err in his consideration of the GAF scores, and the Court
17 will not reverse on this basis.

18 **F. The ALJ's Consideration of Plaintiff's Methamphetamine Use**

19 Plaintiff argues the ALJ gave too much consideration to Plaintiff's use of
20 methamphetamines. (Doc. 20 at 7). However, this Court has reviewed the record and
21 finds the ALJ did not base his decision on Plaintiff's use of methamphetamines and
22 benzodiazepines. (Doc. 15-3 at 29). Instead, the ALJ noted that Plaintiff gave
23 inconsistent statements to variously treatment providers about his drug use. (*Id.*). The
24 ALJ then found that Plaintiff's inconsistent statements to his treatment providers were a
25 further basis to not credit Plaintiff's statements about the severity of his symptoms. (*Id.*).

26 The Court finds it was not error for the ALJ to consider inconsistencies in
27 Plaintiff's own statements regarding information relevant to his condition as evidence
28 that he was not credible. *See generally Thomas v. Barnhart*, 278 F.3d 947, 959 (9th Cir.

1 2002) (discounting the claimant’s credibility because she presented conflicting
2 information about her drug and alcohol use). Thus, the Court will not reverse on this
3 basis.

4 **G. The Doctors’ Failure to Consider Plaintiff’s Familial History**

5 Plaintiff argues that his mental health records do not show any effort by Plaintiff’s
6 doctors to explore or mitigate the abuse Plaintiff allegedly suffered from his father. (Doc.
7 20 at 7). This argument appears to be a criticism of Plaintiff’s doctors rather than a claim
8 of error directed at the ALJ’s decision. The Court will not reverse the ALJ for failing to
9 consider a further potential factual basis for Plaintiff’s condition that was not in the
10 record, nor treated (per Plaintiff) by Plaintiff’s doctors.

11 **H. Plaintiff’s Daily Activities**

12 Plaintiff argues that it was error for the ALJ to consider Plaintiff’s daily activities
13 in the decision to deny benefits. (Doc. 20 at 7-8). The ALJ considered Plaintiff’s daily
14 activities in two contexts.

15 First, the ALJ found that the breadth and complexity of Plaintiff’s daily activities
16 undermined the credibility of Plaintiff’s allegations of disabling limitations. (Doc. 51-3
17 at 27-28). The Court of Appeals has held that in making a credibility determination
18 regarding a plaintiff in the social security context it is appropriate for the ALJ to consider
19 the plaintiff’s daily activities (among other considerations). *Tommasetti*, 533 F.3d at
20 1039. Thus, this Court finds no error in the ALJ considering Plaintiff’s daily activities as
21 part of his credibility determination.

22 Second, the ALJ noted that, “some of the physical and mental abilities and social
23 interactions required to perform these activities are the same as those necessary for
24 obtaining and maintaining employment.” (Doc. 15 at 27). As the ALJ noted, Plaintiff,
25 “maintain[s] his] grooming and hygiene, prepare[s] meals, perform[s] light housework,
26 watch[s] television, shop[s] for groceries, attend[s] bible study, attend[s] group therapy,
27 feed[s] the homeless, cook[s], perform[s] household chores, and attend[s] church
28 regularly.” (Doc. 15-3 at 27).

1 Plaintiff argues that the ALJ erred in relying on these daily activities as evidence
2 he could work because some of them do not require much effort and some Plaintiff
3 performed with difficulty. (Doc. 20 at 7). However, the Court finds the ALJ correctly
4 summarized the evidence of record, and there was no error on this point. Further,
5 Plaintiff argues that he was only feeding the homeless because a shelter required it as a
6 condition of being permitted to stay there. (Doc. 20 at 8). While this argument shows
7 Plaintiff was not feeding the homeless as an act of goodwill, but instead in exchange for a
8 benefit, this is how most work is performed. In other words, most employees do not
9 work as an act of goodwill towards their employer, but instead in exchange for a benefit
10 or compensation. Thus, the ALJ did not err in considering Plaintiff's ability to perform
11 this task in exchange for a benefit as evidence of an ability that was similar to those
12 needed for obtaining and maintaining employment.

13 **III. New Evidence**

14 Plaintiff argues that if this Court is going to affirm the decision of the ALJ, the
15 Court should instead remand for the ALJ to consider new evidence.³ (Doc. 20 at 8-9).
16 The Government responds and notes that of the four records Plaintiff seeks to have the
17 ALJ consider, two records are from outside the time frame of the ALJ's decision, and one
18 was before the ALJ at the time of his decision. (Doc. 24 at 10). In his reply, Plaintiff
19 does not dispute this. (Doc. 25 at 1-2). As to the one remaining record, Defendant
20 argues it is not material because it does not provide any additional evidence regarding
21 Plaintiff's limitations. (Doc. 24 at 11) In his reply, Plaintiff does not dispute this. (Doc.
22 25 at 1-2).

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24 ³ Although Plaintiff cites no law in support of this argument (Doc. 20 at 8-9),
25 Defendant sets forth the legal test for remand. Specifically,
26 On judicial review, a court may remand a matter to the agency for
27 consideration of new evidence pursuant to sentence six of 42 U.S.C. §
28 405(g), but only where such evidence is material and the claimant
establishes good cause for failing to submit it during administrative
proceedings. 42 U.S.C. § 405(g); *Orteza v. Shalala*, 50 F.3d 748, 751 (9th
Cir. 1994)...Evidence is material if it bears "directly and substantially on
the matter in dispute." *Burton v. Heckler*, 724 F.2d 1415, 1417 (9th Cir.
1984).
(Doc. 24 at 10-11).

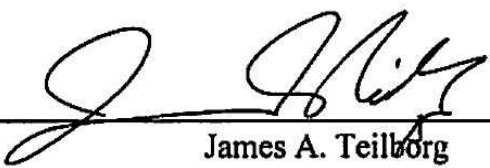
1 Plaintiff's only argument for remand in his reply is that the two records from
2 outside the time frame under consideration by the ALJ could impact the ALJ's
3 consideration of Plaintiff's back condition. (Doc. 25 at 1). Specifically, Plaintiff claims
4 these records show Plaintiff's back surgery was not successful. (*Id.*). In the decision, the
5 ALJ stated, "[Plaintiff] stated that he has back pain for which he underwent a back
6 surgery. [Plaintiff] noted, however, that he continues to have pain, but in different areas,
7 including low back and hips, and that the pain radiates to his foot." (Doc. 15-3 at 25).
8 On this record, the Court agrees with Defendant that the new evidence is not material
9 because the ALJ did not find Plaintiff was cured by the back surgery; thus, the new
10 evidence from outside the relevant time frame does not change the evidence that was
11 before the ALJ. Accordingly, the Court will not remand for the ALJ to consider this
12 additional evidence.

13 **IV. Conclusion**

14 Based on the foregoing,

15 **IT IS ORDERED** that the decision of the Administrative Law Judge is affirmed
16 and the Clerk of the Court shall enter judgment accordingly.

17 Dated this 29th day of January, 2018.

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22 _____
23 James A. Teilborg
24 Senior United States District Judge
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