

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

HENRY GONZALEZ,  
Plaintiff,  
v.  
CAROLYN W. COLVIN,  
Commissioner of Social Security,  
Defendant.



NO. CV 15-1167 AGR  
  
MEMORANDUM OPINION AND  
ORDER

---

Plaintiff Henry Gonzalez filed this action on February 18, 2015. Pursuant to 28 U.S.C. § 636(c), the parties consented to proceed before the magistrate judge. (Dkt. Nos. 7, 14.) On October 19, 2015, the parties filed a Joint Stipulation (“JS”) that addressed the disputed issues. The court has taken the matter under submission without oral argument.

Having reviewed the entire file, the court affirms the decision of the Commissioner.

1 I.

2 **PROCEDURAL BACKGROUND**

3 In December 2011, Gonzalez filed applications for supplemental security  
4 income and disability insurance benefits. Administrative Record (“AR”) 17. The  
5 applications were denied initially. AR 17, 91-92. Gonzalez requested a hearing  
6 before an Administrative Law Judge (“ALJ”). AR 98. On February 12, 2013, the  
7 ALJ conducted a hearing at which Gonzalez and a vocational expert (“VE”)  
8 testified. AR 674-718. At the hearing, the onset date was amended to December  
9 31, 2010. AR 17, 679. On August 16, 2013, the ALJ conducted a supplemental  
10 hearing at which Gonzalez and a VE testified. AR 35-52. On October 25, 2013,  
11 the ALJ issued a decision denying benefits. AR 14-28. On December 17, 2014,  
12 the Appeals Council denied the request for review. AR 1-3. This action followed.

13 II.

14 **STANDARD OF REVIEW**

15 Pursuant to 42 U.S.C. § 405(g), this court reviews the Commissioner’s  
16 decision to deny benefits. The decision will be disturbed only if it is not supported  
17 by substantial evidence, or if it is based upon the application of improper legal  
18 standards. *Moncada v. Chater*, 60 F.3d 521, 523 (9th Cir. 1995) (per curiam);  
19 *Drouin v. Sullivan*, 966 F.2d 1255, 1257 (9th Cir. 1992).

20 “Substantial evidence” means “more than a mere scintilla but less than a  
21 preponderance – it is such relevant evidence that a reasonable mind might  
22 accept as adequate to support the conclusion.” *Moncada*, 60 F.3d at 523. In  
23 determining whether substantial evidence exists to support the Commissioner’s  
24 decision, the court examines the administrative record as a whole, considering  
25 adverse as well as supporting evidence. *Drouin*, 966 F.2d at 1257. When the  
26 evidence is susceptible to more than one rational interpretation, the court must  
27 defer to the Commissioner’s decision. *Moncada*, 60 F.3d at 523.

1 III.

2 **DISCUSSION**

3 **A. Disability**

4 A person qualifies as disabled, and thereby eligible for such benefits, “only  
5 if his physical or mental impairment or impairments are of such severity that he is  
6 not only unable to do his previous work but cannot, considering his age,  
7 education, and work experience, engage in any other kind of substantial gainful  
8 work which exists in the national economy.” *Barnhart v. Thomas*, 540 U.S. 20,  
9 21-22, 124 S. Ct. 376, 157 L. Ed. 2d 333 (2003).

10 **B. The ALJ’s Findings**

11 The ALJ found that Gonzalez met the insured status requirements through  
12 December 31, 2014. AR 19. Following the five-step sequential analysis  
13 applicable to disability determinations, *Lounsbury v. Barnhart*, 468 F.3d 1111,  
14 1114 (9th Cir. 2006),<sup>1</sup> the ALJ found that Gonzalez has the severe impairments of  
15 lumbar sprain/strain; cervical sprain/strain; lumbar radiculopathy; right ankle  
16 tendonitis; history of left shoulder fracture; status post right shoulder dislocation;  
17 asthma; hypertension; obesity; mood disorder, not otherwise specified; major  
18 depressive disorder; and anxiety disorder, not otherwise specified. AR 19. He  
19 has the residual functional capacity (“RFC”) to perform light work except that he is  
20 precluded from climbing and balancing on uneven, narrow, slippery or erratic  
21 moving surfaces; he can occasionally balance, stoop, kneel, crouch and crawl; he  
22 should avoid exposure to dusts, fumes and extreme cold/heat; he is limited to  
23 occasional exposure to humidity and wetness; he is precluded from reaching or  
24 lifting above the shoulders with the bilateral upper extremities; he is limited to

---

25  
26 <sup>1</sup> The five-step sequential analysis examines whether the claimant  
27 engaged in substantial gainful activity, whether the claimant’s impairment is  
28 severe, whether the impairment meets or equals a listed impairment, whether the  
claimant is able to do his or her past relevant work, and whether the claimant is  
able to do any other work. *Lounsbury*, 468 F.3d at 1114.

1 frequent exposure to unprotected heights, moving mechanical parts and  
2 operating a motor vehicle; and he is limited to unskilled simple repetitive tasks  
3 with only incidental work-related interaction with coworkers and supervisors, and  
4 no interaction with the general public. AR 20-21.

5 The ALJ found that Gonzalez is unable to perform any past relevant work,  
6 but there are jobs that exist in significant numbers in the national economy that  
7 he can perform such as packager, assembler and electronics worker. AR 26-27.

8 **C. Credibility**

9 “To determine whether a claimant’s testimony regarding subjective pain or  
10 symptoms is credible, an ALJ must engage in a two-step analysis.” *Lingenfelter*  
11 *v. Astrue*, 504 F.3d 1028, 1035-36 (9th Cir. 2007). At step one, “the ALJ must  
12 determine whether the claimant has presented objective medical evidence of an  
13 underlying impairment ‘which could reasonably be expected to produce the pain  
14 or other symptoms alleged.’” *Id.* (quoting *Bunnell v. Sullivan*, 947 F.2d 341, 344  
15 (9th Cir. 1991) (en banc)).

16 Second, when an ALJ concludes that a claimant is not malingering and has  
17 satisfied the first step, “the ALJ may ‘reject the claimant’s testimony about the  
18 severity of her symptoms only by offering specific, clear and convincing reasons  
19 for doing so.’” *Brown-Hunter v. Colvin*, 798 F.3d 749, 755 (9th Cir. 2015) (citation  
20 omitted), *amended* 2015 WL 6684997 (Nov. 3, 2015); *Burrell v. Colvin*, 775 F.3d  
21 1133, 1136-37 (9th Cir. 2014). “A finding that a claimant’s testimony is not  
22 credible ‘must be sufficiently specific to allow a reviewing court to conclude the  
23 adjudicator rejected the claimant’s testimony on permissible grounds and did not  
24 arbitrarily discredit a claimant’s testimony regarding pain.’” *Brown-Hunter*, 798  
25 F.3d at 755 (citation omitted). “General findings are insufficient; rather, the ALJ  
26 must identify what testimony is not credible and what evidence undermines the  
27 claimant’s complaints.” *Id.* (citation omitted). In weighing credibility, the ALJ may  
28 consider factors including the claimant’s daily activities; and “ordinary techniques

1 of credibility evaluation.” *Bunnell*, 947 F.2d at 346 (citing Social Security Ruling  
2 (“SSR”) 88-13) (quotation marks omitted).<sup>2</sup> The ALJ may consider: (a)  
3 inconsistencies or discrepancies in a claimant’s statements; (b) inconsistencies  
4 between a claimant’s statements and activities; (c) exaggerated complaints; and  
5 (d) an unexplained failure to seek treatment. *Thomas v. Barnhart*, 278 F.3d 947,  
6 958-59 (9th Cir. 2002).

7 The ALJ found that Gonzalez’s statements were not credible to the extent  
8 they were inconsistent with the residual functional capacity. AR 22. The ALJ  
9 relied on three reasons: (1) lack of support in the objective medical record; (2)  
10 minimal mental health treatment; and (3) daily activities inconsistent with the  
11 degree of disability alleged. AR 22.

12 The ALJ may properly consider lack of objective medical evidence  
13 supporting the degree of limitation, but it cannot form the sole basis for  
14 discounting a claimant’s credibility. *Burch v. Barnhart*, 400 F.3d 676, 681 (9th  
15 Cir. 2005).

16 The ALJ’s finding that the medical evidence does not support the degree of  
17 Gonzalez’s allegations is supported by substantial evidence. The ALJ correctly  
18 noted that no medical opinion suggests mental functional limitations greater than  
19 the RFC assessment. AR 26. In December 2011, around the time he applied for  
20 benefits, Gonzalez reported that he has had anxiety for the past 10 years and  
21 asked to see a therapist. He presented with a normal affect. He was prescribed  
22 Ativan and referred to a psychiatrist. AR 24, 525-26. In March 2012, Gonzalez  
23 went to a mental health center. He reported that he had lost his job two years  
24 earlier, had been unable to find employment and felt he could not support his  
25

---

26 <sup>2</sup> Social Security rulings do not have the force of law. Nevertheless, they  
27 “constitute Social Security Administration interpretations of the statute it  
28 administers and of its own regulations,” and are given deference “unless they are  
plainly erroneous or inconsistent with the Act or regulations.” *Han v. Bowen*, 882  
F.2d 1453, 1457 (9th Cir. 1989).

1 family. He felt anxious, claustrophobic and irritable with racing thoughts, feelings  
2 of dread, isolative behavior and poor concentration. AR 24, 402. He reported  
3 past substance use/abuse including amphetamines and cocaine or crack eight  
4 months ago, and marijuana four months ago. AR 403. Gonzalez had normal eye  
5 contact and speech, unimpaired memory, average fund of knowledge, no  
6 perceptual, thought process or thought content disturbances, and intact  
7 judgment. His mood was anxious and tearful, his affect was worried and sad,  
8 and his concentration was described as “rumination.” AR 24, 404. His Global  
9 Assessment of Functioning (GAF) assessment was 48.<sup>3</sup> AR 24, 404.

10 In the psychiatric evaluation in April 2012, Gonzalez claimed to be bipolar  
11 but had no manic episodes. He “sometimes begins drinking and can’t stop” with  
12 “occasional memory lapses.”<sup>4</sup> AR 405. He reported severe panic episodes  
13 which started after he lost his job in 2010, mood lability, paranoia, auditory  
14 hallucination (hearing his name being called), difficulty concentrating, angry  
15 outbursts and low frustration tolerance. AR 24, 405. According to Gonzalez, he  
16 was out on bail.<sup>5</sup> AR 407. Gonzalez was assessed as being well groomed with  
17 normal eye contact and speech, unimpaired memory and intellectual functioning,  
18 intact concentration, above average fund of knowledge and intact judgment. His  
19 mood was irritable and anxious with a known stressor, and his affect was  
20 appropriate. He reported poor impulse control but his behavior was appropriate  
21 during the assessment. AR 408. Gonzalez was diagnosed with major

---

22  
23 <sup>3</sup> The current Diagnostic and Statistical Manual of Mental Disorders  
24 (“DSM”) no longer uses GAF scores. Previously, the GAF scale took into account  
25 psychological, social and occupational functioning. A GAF of 41-50 indicated  
serious symptoms or any serious impairment in social, occupational or school  
functioning (e.g., no friends, unable to keep a job). DSM IV-TR 34 (4th ed.).

26 <sup>4</sup> Gonzalez denied illicit drug use past or present. AR 406.

27 <sup>5</sup> At a hearing, Gonzalez said he went to jail because “some guy made me  
28 mad and they said I kidnapped him.” AR 692. Gonzalez said he was housed in  
the mental ward. *Id.*

1 depressive disorder, recurrent, severe with psychotic features and rule/out bipolar  
2 disorder. His GAF was 50. AR 24, 408. In May 2012, a medication note  
3 indicated Gonzalez reported feeling much better. 24, 410. He still had some  
4 racing thoughts, his sleep varied and his stressors continued. Gonzalez had  
5 direct eye contact, normal speech, appropriate affect and appeared goal directed.  
6 He denied auditory or visual hallucinations. AR 410. After the hearing, Gonzalez  
7 submitted a letter from Dr. Martinez at the mental health center. As the ALJ  
8 observed, the letter provided minimal information and did not include any  
9 treatment notes. AR 24, 673 (noting that Gonzalez was treated for a “mental  
10 health disorder” with medication that “causes drowsiness during the day”).

11 An examining psychiatrist, Dr. Parikh, evaluated Gonzalez in March 2012.  
12 Gonzalez complained of depression, anxiety and mood swings. He reported past  
13 drug and alcohol abuse, and legal problems. AR 24, 371-72. Dr. Parikh  
14 observed that Gonzalez was attentive and could focus attention during the  
15 evaluation. He had normal speech with a good vocabulary. His mood was  
16 depressed and anxious, but his affect was brighter. He denied feeling hopeless  
17 or helpless. His thoughts were logical, and he denied hearing voices or seeing  
18 visual hallucinations. His memory was intact and his thought content was normal.  
19 He could not perform serial seven subtractions from 100 or double digit arithmetic  
20 calculations. AR 374-76. Dr. Parikh diagnosed mood disorder, not otherwise  
21 specified; alcohol dependence, past drug abuse and bipolar disorder by history.  
22 His GAF was 70.<sup>6</sup> Dr. Parikh found no mental limitations. AR 24-25, 376-77.

23 In March 2013, Gonzalez was evaluated by an examining psychologist,  
24 who found that Gonzalez put forth inadequate effort and exaggerated his  
25 symptoms. AR 25. Gonzalez’s attorney argued that the report should be given

---

26  
27 <sup>6</sup> A GAF of 61-70 indicates some mild symptoms or some difficulty in  
28 social, occupational or school functioning (e.g., theft within the household), but  
generally functioning pretty well with some meaningful interpersonal relationships.  
DSM IV-TR at 34.

1 no weight. The ALJ did not agree with all of the attorney's reasons but gave no  
2 weight to the functional assessment because Gonzalez appeared to be more  
3 functionally limited than the report indicated. The ALJ also gave no weight to Dr.  
4 Parikh's functional assessment. AR 26.

5 The ALJ's finding that Gonzalez had minimal and conservative mental  
6 health treatment is supported by substantial evidence. Gonzalez's treatment  
7 began around the time he applied for benefits. Nothing in the record indicates  
8 that Gonzalez has sought or received more than conservative treatment. AR 22.

9 The ALJ's finding as to activities of daily living is supported by substantial  
10 evidence. The ALJ noted that mental capabilities required to perform Gonzalez's  
11 activities were similar to that necessary for employment. Gonzalez is able to take  
12 care of his own hygiene, take the children to and from school, take the children to  
13 the park, perform light household chores and play video games during the day.  
14 AR 22, 373-74, 700-01, 704.

15 When, as here, the ALJ's credibility finding is supported by substantial  
16 evidence, the court "may not engage in second-guessing." *Thomas*, 278 F.3d at  
17 959.

18 **IV.**

19 **ORDER**

20 IT IS HEREBY ORDERED that the decision of the Commissioner is  
21 affirmed and that judgment be entered for the Commissioner.

22 IT IS FURTHER ORDERED that the Clerk serve copies of this Order and  
23 the Judgment herein on all parties or their counsel.

24  
25  
26 DATED: January 5, 2016



ALICIA G. ROSENBERG  
United States Magistrate Judge