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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JAMIE A. CRUZ, Plaintiff, vs. NANCY BERRYHILL, Acting Commissioner of Social Security, Defendant.	Case No. 2:16-CV-01679 (VEB) DECISION AND ORDER

I. INTRODUCTION

In January of 2013, Plaintiff Jamie A. Cruz applied for Disability Insurance benefits and Supplemental Security Income benefits under the Social Security Act. The Commissioner of Social Security denied the applications.[1]

[1] On January 23, 2017, Nancy Berryhill took office as Acting Social Security Commissioner. The Clerk of the Court is directed to substitute Acting Commissioner Berryhill as the named defendant in this matter pursuant to Rule 25(d)(1) of the Federal Rules of Civil Procedure.

Plaintiff, acting pro se, commenced this action seeking judicial review of the Commissioner's denial of benefits pursuant to 42 U.S.C. §§ 405 (g) and 1383 (c)(3).

The parties consented to the jurisdiction of a United States Magistrate Judge. (Docket No. 7, 9). On March 28, 2017, this case was referred to the undersigned pursuant to General Order 05-07. (Docket No. 17).

II. BACKGROUND

Plaintiff applied for benefits on February 8, 2013, alleging disability beginning March 31, 2005. (T at 185-93).[2] The applications were denied initially and on reconsideration. Plaintiff requested a hearing before an Administrative Law Judge ("ALJ").

On June 17, 2014, a hearing was held before ALJ Elizabeth R. Lishner. (T at 83). Plaintiff appeared with an attorney and testified. (T at 86-104). The ALJ also received testimony from Enrique Nicolas, a vocational expert. (T at 105-108).

On August 25, 2014, the ALJ issued a written decision denying the applications for benefits. (T at 67-82). The ALJ's decision became the Commissioner's final decision on January 29, 2016, when the Appeals Council denied Plaintiff's request for review. (T at 1-7).

[2] Citations to ("T") refer to the administrative record at Docket No. 13.

On March 11, 2016, Plaintiff, pro se, filed this action seeking judicial review of the Commissioner's denial of benefits. (Docket No. 1). The Commissioner interposed an Answer on June 23, 2016. (Docket No. 13). The Commissioner filed an opposing memorandum on July 25, 2016. (Docket No. 15). Plaintiff filed a supporting memorandum on August 29, 2016. (Docket No. 16).

After reviewing the pleadings, memoranda, and administrative record, this Court finds that the Commissioner's decision must be affirmed and this case be dismissed.

III. DISCUSSION

A. Sequential Evaluation Process

The Social Security Act ("the Act") defines disability as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act also provides that a claimant shall be determined to be under a disability only if any impairments are of such severity that he or she is not only unable to do previous work but cannot, considering his or her age, education and work experiences, engage in any other substantial work which exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A),

1382c(a)(3)(B). Thus, the definition of disability consists of both medical and vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001).

The Commissioner has established a five-step sequential evaluation process for determining whether a person is disabled. 20 C.F.R. §§ 404.1520, 416.920. Step one determines if the person is engaged in substantial gainful activities. If so, benefits are denied. 20 C.F.R. §§ 404. 1520(a)(4)(i), 416.920(a)(4)(i). If not, the decision maker proceeds to step two, which determines whether the claimant has a medically severe impairment or combination of impairments. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

If the claimant does not have a severe impairment or combination of impairments, the disability claim is denied. If the impairment is severe, the evaluation proceeds to the third step, which compares the claimant's impairment(s) with a number of listed impairments acknowledged by the Commissioner to be so severe as to preclude substantial gainful activity. 20 C.F.R. §§ 404.1520(a)(4)(iii), 416.920(a)(4)(iii); 20 C.F.R. § 404 Subpt. P App. 1. If the impairment meets or equals one of the listed impairments, the claimant is conclusively presumed to be disabled. If the impairment is not one conclusively presumed to be disabling, the evaluation proceeds to the fourth step, which determines whether the impairment prevents the claimant from performing work which was performed in the past. If the

claimant is able to perform previous work, he or she is deemed not disabled. 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). At this step, the claimant's residual functional capacity (RFC) is considered. If the claimant cannot perform past relevant work, the fifth and final step in the process determines whether he or she is able to perform other work in the national economy in view of his or her residual functional capacity, age, education, and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v); *Bowen v. Yuckert*, 482 U.S. 137 (1987).

The initial burden of proof rests upon the claimant to establish a *prima facie* case of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th Cir. 1971); *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). The initial burden is met once the claimant establishes that a mental or physical impairment prevents the performance of previous work. The burden then shifts, at step five, to the Commissioner to show that (1) plaintiff can perform other substantial gainful activity and (2) a "significant number of jobs exist in the national economy" that the claimant can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9th Cir. 1984).

B. Standard of Review

Congress has provided a limited scope of judicial review of a Commissioner's decision. 42 U.S.C. § 405(g). A Court must uphold a Commissioner's decision, made through an ALJ, when the determination is not based on legal error and is

supported by substantial evidence. *See Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir. 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999).

"The [Commissioner's] determination that a plaintiff is not disabled will be upheld if the findings of fact are supported by substantial evidence." *Delgado v. Heckler*, 722 F.2d 570, 572 (9th Cir. 1983)(citing 42 U.S.C. § 405(g)). Substantial evidence is more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n 10 (9th Cir. 1975), but less than a preponderance. *McAllister v. Sullivan*, 888 F.2d 599, 601-02 (9th Cir. 1989). Substantial evidence "means such evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971)(citations omitted). "[S]uch inferences and conclusions as the [Commissioner] may reasonably draw from the evidence" will also be upheld. *Mark v. Celebreeze*, 348 F.2d 289, 293 (9th Cir. 1965). On review, the Court considers the record as a whole, not just the evidence supporting the decision of the Commissioner. *Weetman v. Sullivan*, 877 F.2d 20, 22 (9th Cir. 1989)(quoting *Kornock v. Harris*, 648 F.2d 525, 526 (9th Cir. 1980)).

It is the role of the Commissioner, not this Court, to resolve conflicts in evidence. *Richardson*, 402 U.S. at 400. If evidence supports more than one rational interpretation, the Court may not substitute its judgment for that of the Commissioner. *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9th

Cir. 1984). Nevertheless, a decision supported by substantial evidence will still be set aside if the proper legal standards were not applied in weighing the evidence and making the decision. *Brawner v. Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1987). Thus, if there is substantial evidence to support the administrative findings, or if there is conflicting evidence that will support a finding of either disability or non-disability, the finding of the Commissioner is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-30 (9th Cir. 1987).

C. Commissioner's Decision

The ALJ determined that Plaintiff had not engaged in substantial gainful activity since March 31, 2005, the alleged onset date, and met the insured status requirements of the Social Security Act through that date as well (the "date last insured"). (T at 71). The ALJ found that Plaintiff did not have a severe impairment prior to the date last insured (and was therefore not entitled to disability insurance benefits), but concluded that her major depressive disorder was a severe impairment as of January 29, 2013, the date she applied for SSI benefits. (T at 71-72).

The ALJ determined that Plaintiff did not have an impairment or combination of impairments that met or medically equaled one of the impairments set forth in the Listings. (T at 72).

The ALJ found that Plaintiff retained the residual functional capacity ("RFC") to work at all exterional levels, provided her workplace is limited to occasional changes, occasional contact with co-workers and supervisors, and no contact with the public. (T at 73).

The ALJ noted that Plaintiff had no past relevant work. (T at 72). Considering Plaintiff's medical/vocational profile, the ALJ found that jobs exist in significant numbers in the national economy that Plaintiff can perform. (T at 78).

Accordingly, the ALJ determined that Plaintiff was not disabled within the meaning of the Social Security Act between March 31, 2005 (the alleged onset date) and August 25, 2014 (the date of the decision) and was therefore not entitled to benefits. (T at 79). As noted above, the ALJ's decision became the Commissioner's final decision when the Appeals Council denied Plaintiff's request for review. (T at 1-7).

D. Disputed Issues

This Court is mindful that Plaintiff is pro se. A pro se litigant's pleadings are construed more liberally than pleadings prepared by counsel. *Haines v. Kerner*, 404 U.S. 519, 520-21, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972); *Wolfe v. Strankman*, 392 F.3d 358, 362 (9th Cir. 2004). A pro se litigant should receive leniency with respect to non-compliance with technical or procedural rules, although "a pro se litigant is

not excused from knowing the most basic pleading requirements." *Am. Ass'n of Naturopathic Physicians v. Hayhurst*, 227 F.3d 1104, 1107-08 (9th Cir. 2000); *Draper v. Coombs*, 792 F.2d 915, 924 (9th Cir. 1986).

Here, construed liberally, Plaintiff's pleadings raise the following three (3) arguments: the ALJ improperly weighed the medical opinion evidence; the ALJ's credibility analysis was flawed; and new evidence supports Plaintiff's entitlement to benefits. This Court will address each argument in turn.

IV. ANALYSIS

A. Medical Opinion Evidence

In disability proceedings, a treating physician's opinion carries more weight than an examining physician's opinion, and an examining physician's opinion is given more weight than that of a non:-examining physician. *Benecke v. Barnhart*, 379 F.3d 587, 592 (9th Cir. 2004); *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995). If the treating or examining physician's opinions are not contradicted, they can be rejected only with clear and convincing reasons. *Lester*, 81 F.3d at 830. If contradicted, the opinion can only be rejected for "specific" and "legitimate" reasons that are supported by substantial evidence in the record. *Andrews v. Shalala*, 53 F.3d 1035, 1043 (9th Cir. 1995).

An ALJ satisfies the "substantial evidence" requirement by "setting out a detailed and thorough summary of the facts and conflicting clinical evidence, stating his interpretation thereof, and making findings." *Garrison v. Colvin*, 759 F.3d 995, 1012 (9th Cir. 2014)(quoting *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998)). "The ALJ must do more than state conclusions. He must set forth his own interpretations and explain why they, rather than the doctors', are correct." *Id*.

Here, the record includes a letter, dated November 9, 2011, from Melanie Kim, a treating staff psychiatrist with the Downtown Women's Center. Dr. Kim wrote to the Department of Social Services on Plaintiff's behalf. She explained that Plaintiff was diagnosed with Major Depressive Disorder and Post-Traumatic Stress Disorder, chronic. Dr. Kim opined that Plaintiff was "unable to work" was expected to be in treatment until she was revaluated in a year. (T at 394).

The ALJ acted within her discretion in deciding not to afford controlling weight to Dr. Kim's opinion. The letter contains no citations to objective findings or clinical notes. The ALJ is not obliged to accept a treating source opinion that is "brief, conclusory and inadequately supported by clinical findings." *Lingenfelter v. Astrue*, 504 F.3d 1028, 1044-45 (9th Cir. 2007) (citing *Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002)). Moreover, as discussed further below, the ALJ reasonably concluded that the overall medical record, including the treatment

history, was inconsistent with Dr. Kim's opinion. (T at 74-76). *See Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005)(finding that "discrepancy" between treatment notes and opinion was "a clear and convincing reason for not relying on the doctor's opinion regarding" the claimant's limitations).

This Court has considered whether the ALJ was obliged to re-contact Dr. Kim. However,"[a]n ALJ's duty to develop the record further is triggered only when there is ambiguous evidence or when the record is inadequate to allow for proper evaluation of the evidence." *Mayes v. Massanari*, 276 F.3d 453, 459-60 (9th Cir. 2001). Here, for the reasons outlined herein, this Court finds that the record, which included a detailed consultative examination and State Agency review physician assessments, along with treatment records, was adequate to allow for proper evaluation of the evidence. As such, it was not necessary for the ALJ to re-contact Dr. Kin.

In addition, a treating physician's conclusion that the claimant is "disabled" is not entitled to any "special significance" because that issue is reserved to the Commissioner. *See* 20 C.F.R. §404.1527(d)(3), § 404.1527(d)(1); SSR 96-5p, *Ram v. Astrue*, 2012 U.S. Dist. LEXIS 183742 (C.D. Cal. Nov. 30, 2012) ("a treating physician's opinion regarding the ultimate issue of disability is not entitled to any special weight"); *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001)

(holding that treating physician's opinion is not binding on the ultimate determination of disability).

The record also contains a July 2010 statement from a treating social worker (Ms. Sweet) to the effect that Plaintiff was experiencing depressive symptoms that "impair[ed] her ability to maintain vocational and interpersonal relationships." (T at 292). The ALJ noted that she agreed that Plaintiff's psychiatric symptoms impaired her ability to perform work-related activities. (T at 76). However, the ALJ found that the level of impairment did not preclude Plaintiff from competitive employment, provided she was permitted to work in an environment with only occasional changes, occasional contact with co-workers and supervisors, and no contact with the public. (T at 78). This is a reasonable reading of Ms. Sweet's report. In any event, even if Ms. Sweet's statement is construed as asserting a greater degree of limitation, that statement would not be entitled to controlling weight as Ms. Sweet is not an "acceptable medical source."[3]

[3] In evaluating a claim, the ALJ must consider evidence from the claimant's medical sources. 20 C.F.R. §§ 404.1512, 416.912. Medical sources are divided into two categories: "acceptable" and "not acceptable." 20 C.F.R. § 404.1502. Acceptable medical sources include licensed physicians and psychologists. 20 C.F.R. § 404.1502. Medical sources classified as "not acceptable" (also known as "other sources") include nurse practitioners, therapists, licensed clinical social workers, and chiropractors. SSR 06-03p.

The ALJ's RFC determination is supported by substantial evidence in the record. The ALJ reviewed and discussed in detail the treatment history and reasonably concluded that, notwithstanding some GAF scores indicating significant symptoms,[4] the overall record generally showed effective symptom management and some improvement over time, with limited evidence of limitations that would preclude employment. (T at 74-75).

In addition, the ALJ's determination was supported by the assessment of Dr. Elmo Lee, a consultative psychiatric examiner. Dr. Lee assessed a GAF score of 70 (T at 284). "A GAF of 61-70 indicates '[s]ome mild symptoms (e.g., depressed mood and mild insomnia) or some difficulty in social, occupational, or school functioning (e.g., occasional truancy, or theft within the household), but generally functioning pretty well, has some meaningful interpersonal relationships.'" *Tagger v. Astrue*, 536 F. Supp. 2d 1170, 1174 n.8 (C.D. Cal. 2008). Dr. Lee opined that Plaintiff could perform simple and repetitive tasks, as well as detailed and complex tasks, could accept instructions from supervisors, maintain regular attendance in the workplace, complete a normal workday/workweek, and deal with usual stress, provided she continued with her current mental health treatment and was compliant

[4] "A GAF score is a rough estimate of an individual's psychological, social, and occupational functioning used to reflect the individual's need for treatment." *Vargas v. Lambert*, 159 F.3d 1161, 1164 n.2 (9th Cir. 1998).

with her medication regimen. (T at 285). The ALJ assessed additional limitations regarding Plaintiff's social interaction skills and ability to deal with change (i.e. the ALJ found a greater level of impairment than Dr. Lee did), but Dr. Lee's assessment is generally supportive of the ALJ's overall conclusion.

The non-examining State Agency review consultant concluded that Plaintiff did not have a "severe" impairment or combination of impairments. (T at 76). Although the ALJ found that Plaintiff had a severe impairment and assessed some work-related limitations, the State Agency review consultant's findings are consistent with the ALJ's overall conclusion that Plaintiff retains the RFC to perform work that exists in significant numbers in the national economy.

"The opinions of non-treating or non-examining physicians may also serve as substantial evidence when the opinions are consistent with independent clinical findings or other evidence in the record." *Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002); *see also see also* 20 CFR § 404.1527 (f)(2)(i)("State agency medical and psychological consultants and other program physicians, psychologists, and other medical specialists are highly qualified physicians, psychologists, and other medical specialists who are also experts in Social Security disability evaluation.").

Plaintiff argues that the ALJ should have weighed the evidence differently and given greater weight to evidence suggesting a more significant level of psychiatric

impairment. However, it is the role of the Commissioner, not this Court, to resolve conflicts in evidence. *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989); *Richardson*, 402 U.S. at 400. If the evidence supports more than one rational interpretation, this Court may not substitute its judgment for that of the Commissioner. *Allen v. Heckler*, 749 F.2d 577, 579 (9th 1984). If there is substantial evidence to support the administrative findings, or if there is conflicting evidence that will support a finding of either disability or nondisability, the Commissioner's finding is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-30 (9th Cir. 1987). Here, the ALJ's decision was supported by substantial evidence and must therefore be sustained. *See Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999)(holding that if evidence reasonably supports the Commissioner's decision, the reviewing court must uphold the decision and may not substitute its own judgment).

B. Credibility

A claimant's subjective complaints concerning his or her limitations are an important part of a disability claim. *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2004)(citation omitted). The ALJ's findings with regard to the claimant's credibility must be supported by specific cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Absent affirmative evidence of malingering, the ALJ's reasons for rejecting the claimant's testimony must be "clear

and convincing." *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995). "General findings are insufficient: rather the ALJ must identify what testimony is not credible and what evidence undermines the claimant's complaints." *Lester*, 81 F.3d at 834; *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993).

However, subjective symptomatology by itself cannot be the basis for a finding of disability. A claimant must present medical evidence or findings that the existence of an underlying condition could reasonably be expected to produce the symptomatology alleged. See 42 U.S.C. §§423(d)(5)(A), 1382c (a)(3)(A); 20 C.F.R. § 404.1529(b), 416.929; SSR 96-7p.

The ALJ concluded that Plaintiff's claims of disabling psychiatric impairments were not fully credible. (T at 73). For the reasons that follow, this Court finds the ALJ's decision consistent with applicable law and supported by substantial evidence. First, the ALJ found Plaintiff's subjective claims inconsistent with the treatment record, as well as the assessments of Dr. Lee (the consultative examiner) and the State Agency review consultant. Although lack of supporting medical evidence cannot form the sole basis for discounting pain testimony, it is a factor the ALJ may consider when analyzing credibility. *Burch v. Barnhart*, 400 F.3d 676, 680 (9th Cir. 2005). In other words, an ALJ may properly discount subjective complaints where, as here, they are contradicted by medical records.

Carmickle v. Comm'r of Soc. Sec. Admin., 533 F.3d 1155, 1161 (9th Cir. 2008); *Thomas v. Barnhart,* 278 F.3d 947, 958-59 (9th Cir. 2002).

The ALJ also noted that Plaintiff's activities of daily living contradicted her claims of disabling psychiatric impairments. For example, Plaintiff was able to attend school and obtain a cosmetology license. (T at 73, 293, 298). Treatment notes documented generally good symptom management, some efforts to search for work, and the ability to perform activities of daily living. (T at 73, 484).

When assessing a claimant's credibility, the ALJ may employ "ordinary techniques of credibility evaluation." *Turner v. Comm'r of Soc. Sec*., 613 F.3d 1217, 1224 n.3 (9th Cir. 2010)(quoting *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996)). Activities of daily living are a relevant consideration in assessing a claimant's credibility. *See Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001). Although the claimant does not need to "vegetate in a dark room" to be considered disabled, *Cooper v. Brown*, 815 F.2d 557, 561 (9th Cir. 1987), the ALJ may discount a claimant's testimony to the extent his or her activities of daily living "contradict claims of a totally debilitating impairment." *Molina v. Astrue*, 674 F.3d 1104, 1112-13 (9th Cir. 2011).

Plaintiff notes, correctly, that the ALJ made an error in her discussion of the record. The ALJ stated that Plaintiff completed an 18-month "management

program" in 2004-2005, but then "did not pursue related employment." (T at 73). However, the program in question was an *anger* management program (T at 102) and, as such, there would not seem to be any "related employment" that Plaintiff could have pursued after completing that program. Accordingly, it was an error for the ALJ to characterize the program as being in the nature of a vocational training activity (and, thus, it was likewise error for the ALJ to fault Plaintiff for having failed to pursue "related employment" after completing the program).

With that said, the fact that Plaintiff successfully completed the program is some evidence of her ability to recognize the effects of her mental health challenges, sustain an activity, relate to others, and manage her emotions. Moreover, the more salient findings by the ALJ were that Plaintiff obtained a cosmetology license and otherwise demonstrated a level of functioning inconsistent with disabling mental health symptoms, which, combined with the consultative examiner and review consultant assessments, is sufficient evidence to support the ALJ's overall conclusion.

In sum, although the ALJ's characterization of the anger management program was inaccurate, her error in this regard does not undermine the overall decision, which is supported by substantial evidence for the reasons stated herein, and is therefore harmless. *See Stout v. Comm'r, Soc. Sec. Admin.*, 454 F.3d 1050,

1054-55 (9th Cir. 2006) (describing the harmless error test as whether "the ALJ's error did not materially impact his decision"); *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 885 (9th Cir.2006) (holding that an error is harmless if it was "inconsequential to the ultimate nondisability determination").

For the reasons outlined above, this Court finds no reversible error with regard to the ALJ's credibility determination.

C. New Evidence

Plaintiff submitted a document as an attachment to her memorandum of law that appears to be from her treating psychologist. The report outlines Plaintiff's various mental health diagnoses (major depressive disorder, intermittent explosive disorder, and post-traumatic stress disorder) and sets forth a GAF score of 48 (Docket No. 15, at p. 10-11). A GAF score of 48 is indicative of serious impairment in social, occupational or school functioning. *Haly v. Astrue,* No. EDCV 08-0672, 2009 U.S. Dist. LEXIS 76881, at *12-13 (Cal. CD Aug. 27, 2009).

This document does not appear to have been submitted to the ALJ.

"The Social Security Act 'allows [the court] to order the Secretary to consider additional evidence, but only upon a showing that there is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding.'" *Embrey v. Bowen*, 849 F.2d 418, 423 (9th Cir.

1988) (quoting 42 U.S.C. § 405(g) (1982)). New evidence is material if it "bear[s] directly and substantially on the matter in dispute." *Burton v. Heckler*, 724 F.2d 1415, 1417 (9th Cir. 1984) (citing *Ward v. Schweiker*, 686 F.2d 762, 764 (9th Cir. 1982)).

A claimant shows good cause if he or she "demonstrate[s] that the new evidence was unavailable earlier." *Mayes v. Massanari*, 276 F.3d 453, 463 (9th Cir. 2001) (citing *Key v. Heckler*, 754 F.2d 1545, 1551 (9th Cir. 1985)). The good cause standard is "liberally applied" where the consideration of new evidence will not unfairly prejudice the Commissioner. *Burton*, 724 F.2d at 1417-18. Moreover, good cause is generally found where the evidence was not available at the time of the administrative hearing. *Id*. (citing *Ward*, 686 F.2d at 764). With that said, good cause will not be found where the claimant "merely obtain[s] a more favorable report once his or her claim has been denied." *Mayes*, 276 F.3d at 463.

Here, given Plaintiff's pro se status, this Court would be inclined to be liberal in applying the "good cause" standard. However, consideration of that question is not necessary because, in any event, the new evidence is not "material."

Evidence is "material" if it creates a reasonable possibility that it would change the outcome of the ALJ's decision. *Id.* at 462.

This Court finds that the report does not create a reasonable possibility of a different decision. The ALJ was already aware of the various mental health diagnoses and referenced several GAF scores in the record suggestive of significant impairment. (T at 72-76). For the reasons outlined above, the ALJ's overall assessment is supported by substantial evidence, including the overall treatment record, the consultative examiner's report (which included a GAF score of 70) and State Agency review consultant's findings.

V. CONCLUSION

After carefully reviewing the administrative record, this Court finds substantial evidence supports the Commissioner's decision, including the objective medical evidence and supported medical opinions. It is clear that the ALJ thoroughly examined the record, afforded appropriate weight to the medical evidence, including the assessments of the treating and examining medical providers and medical experts, and afforded the subjective claims of symptoms and limitations an appropriate weight when rendering a decision that Plaintiff is not disabled. This Court finds no reversible error and because substantial evidence supports the Commissioner's decision, the Commissioner is GRANTED summary judgment and that Plaintiff's motion for judgment summary judgment is DENIED.

VI. ORDERS

IT IS THEREFORE ORDERED that:

Judgment be entered AFFIRMING the Commissioner's decision and DISMISSING this action, and it is further ORDERED that

The Clerk of the Court file this Decision and Order, serve copies upon the parties, and CLOSE this case.

DATED this 25th day of July, 2017,

/s/Victor E. Bianchini
VICTOR E. BIANCHINI
UNITED STATES MAGISTRATE JUDGE