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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

ALLEN CHRISTOPHER BROWN,)	No. CV 16-04379-AS
)	
Plaintiff,)	MEMORANDUM OPINION
v.)	
)	
NANCY A. BERRYHILL, ¹)	
Acting Commissioner of Social)	
Security,)	
)	
Defendant.)	
)	

PROCEEDINGS

On June 17, 2016, Plaintiff Allen Christopher Brown ("Plaintiff") filed a Complaint seeking review of the Commissioner's denial of Plaintiff's application for a period of disability and Disability Insurance Benefits ("DIB"). (Docket Entry No 1). On November 16, 2016, Defendant filed an Answer to the Complaint and the Certified Administrative Record ("AR"). (Docket Entry Nos. 17-

¹ Nancy A. Berryhill is now the Acting Commissioner of Social Security and is substituted for Acting Commissioner Carolyn W. Colvin in this case. See 42 U.S.C. § 205(g).

1 18). The parties have consented to proceed before a United States
2 Magistrate Judge. (Docket Entry Nos. 13, 14). The parties filed a
3 Joint Stipulation ("Joint Stip.") on February 21, 2017, setting
4 forth their respective positions on Plaintiff's claims. (Docket
5 Entry No. 19).

6
7 **SUMMARY OF ADMINISTRATIVE DECISION**
8

9 On January 2, 2013, Plaintiff, formerly employed as a data
10 entry clerk, phlebotomist, quality control technician, lab
11 technician, blending tank tender, equipment cleaner and soil tester,
12 (see AR 62-63), filed an application for Disability Insurance
13 Benefits ("DIB"), alleging disability beginning on September 25,
14 2012. (AR 145). On July 10, 2014, the Administrative Law Judge
15 ("ALJ"), Elizabeth R. Lishner, examined the record and heard
16 testimony from Plaintiff, who was represented by counsel, and
17 vocational expert ("VE"), Ronald Hatakeyama. (AR 29-69). On
18 September 12, 2014, the ALJ denied Plaintiff benefits in a written
19 decision. (AR 9-18).

20
21 The ALJ applied the five-step process in evaluating Plaintiff's
22 case. (AR 11-18). At step one, the ALJ determined that Plaintiff
23 had not engaged in substantial gainful activity after the alleged
24 onset date of September 25, 2012. (AR 11). At step two, the ALJ
25 found that Plaintiff had the severe impairments of depression and
26 inguinal hernia. (AR 11). At step three, the ALJ determined that
27 Plaintiff's impairments did not meet or equal a Listing found in 20
28 C.F.R. Part 404, Subpart P, Appendix 1. (AR 11).

1 Before proceeding to step four, the ALJ found that, through the
2 date last insured, Plaintiff had the residual functional capacity
3 ("RFC")² to perform light work as defined in 20 C.F.R. 404.1567(b),
4 including lifting up to 20 pounds occasionally and 10 pounds
5 frequently; standing and/or walking up to 6 hours in an 8-hour
6 workday; sitting up to 6 hours in an 8 hour workday; limited to
7 occasional complex work; and no fast-paced production work. (AR
8 13).

9
10 In making this finding, the ALJ determined that Plaintiff's
11 statements concerning the intensity, persistence and limiting
12 effects of his symptoms were less than fully credible. (AR 15).
13 The ALJ noted that although Plaintiff asserted he could lift no more
14 than 5 pounds, had difficulty concentrating and poor mental
15 aptitude, his assertions were not supported by the objective medical
16 record. (AR 15). Medical records indicated he had good mental
17 status examinations and rarely complained of physical pain after his
18 hernia surgery. (Id.) In addition, Plaintiff testified that his
19 pain decreased and mental condition improved after the hernia
20 surgery he had undergone six months ago, he did not regularly see
21 his doctor for any pain, and that he completed normal daily
22 activities, such as cooking, attending group meetings, walking, and
23 going to the library. (Id.). Moreover, while Plaintiff testified
24 that he felt side effects from his medication, the record repeatedly
25 mentioned that there were no side effects. (Id.).

26
27 ² A Residual Functional Capacity is what a claimant can still do
28 despite existing exertional and nonexertional limitations. See 20
C.F.R. § 404.1545(a)(1).

1 In determining the Plaintiff's RFC, the ALJ gave more weight to
2 the report prepared by F.L. Williams, M.D., a State agency
3 physician, than to the opinion of Mark Geisbrecht, M.D., Plaintiff's
4 treating psychiatrist. (AR 16).

5
6 In a Disability Determination Explanation dated July 8, 2013,
7 Dr. Williams found Plaintiff was not significantly limited in his
8 ability to understand and carry out very short and simple
9 instructions, perform activities within a schedule, sustain an
10 ordinary routine without supervision, work in coordination with, or
11 in proximity to, others without being distracted by them, make
12 simple work-related decisions, and complete a normal workday without
13 interruptions from psychologically based symptoms; moderately
14 limited in his ability to carry out detailed instructions and
15 maintain attention and concentration for extended periods; and
16 markedly limited in the ability to understand and remember detailed
17 instructions. (AR 77). Dr. Williams ultimately found that
18 Plaintiff's limitations were not severe enough to keep him from
19 working. (AR 80).

20
21 The ALJ gave little weight to Dr. Williams' opinion that
22 Plaintiff could understand and perform simple instructions, finding
23 that Plaintiff's testimony and medical records showed that he was
24 capable of performing more than simple, repetitive tasks. (AR 16).
25 The ALJ found that Plaintiff had mild restrictions in activities of
26 daily living because he was able to take care of himself, attend
27 group meetings, go on walks and visit the library. (AR 12). The
28 ALJ found that Plaintiff has mild difficulties in social functioning

1 because, although he asserted that he has difficulty tolerating
2 others in his disability application, he testified that he has some
3 friends. (AR 12). The ALJ found that, in regard to concentration,
4 persistence and pace, Plaintiff has moderate difficulties. (AR 12).
5 Plaintiff testified his main problem was concentration, but his
6 medical records described good mental status examinations. (AR 12).
7 The ALJ found only one instance of Plaintiff struggling to stay
8 concentrated and on task. (See AR 377). The ALJ did not find any
9 episode of decompensation for an extended period of time. (AR 12).
10 The ALJ found no evidence that Plaintiff's depression could result
11 in any decompensation because he had been able to function outside a
12 highly supportive environment. (AR 12).

13

14 In a Residual Functional Questionnaire, dated December 10,
15 2013, Plaintiff's treating physician, Dr. Geisbrecht opined that
16 Plaintiff could sit for 3 hours in an 8-hour workday and stand/walk
17 for 2 hours in an 8-hour workday; occasionally lift less than 10
18 pounds; engage in grasping, fine manipulation and reaching for 50
19 percent of the workday; and miss work three or more times per month.
20 (AR 454-55). Dr. Geisbrecht reported Plaintiff experienced
21 drowsiness, pain, blurred vision and headaches as side effects of
22 his medication. (AR 454).

23

24 The ALJ rejected the opinion of, Dr. Geisbrecht because it was
25 inconsistent with his own treatment notes and not supported by
26 Plaintiff's medical records. (AR 16). For example, the ALJ noted
27 that Dr. Geisbrecht mentioned side effects on the Residual
28 Functional Questionnaire but did not note any side effects in his

1 examination notes. (AR 16). The ALJ noted that Plaintiff's
2 "medical status examinations were good, with normal speech and eye
3 contact, affect congruent with mood, linear thought process, and no
4 thought content disturbances." (AR 14). The ALJ highlighted that
5 during one exam "his insight was adequate and his judgment intact"
6 and he had good grooming, stable gait, with an organized and linear
7 thought process. (AR 14). In early 2014, Plaintiff stated that his
8 depression "seemed like it [was] easing." (AR 14).

9
10 At step four, the ALJ determined that Plaintiff was not able
11 to perform his past relevant work. (AR 16). At step five, the ALJ
12 found Plaintiff was able to perform jobs consistent with his age,
13 education and medical limitations existing in significant numbers in
14 the national economy. (AR 17). The ALJ adopted VE testimony that
15 Plaintiff could perform the jobs of office helper (DOT 239.567-010),
16 mail clerk (DOT 209.687-026) and cleaner housekeeper (DOT 323.687-
17 014). (AR 17). The ALJ determined that the VE's testimony was
18 consistent with the information contained in the Dictionary of
19 Occupational Titles ("DOT"). (AR 17). Accordingly, the ALJ
20 concluded that Plaintiff was not disabled within the meaning of the
21 Social Security Act and was therefore not entitled to benefits. (AR
22 18).

23
24 On October 8, 2014, Plaintiff requested that the Appeals
25 Council review the ALJ's decision. The Appeals Council denied
26 Plaintiff's request on September 10, 2016. (AR 5). The ALJ's
27 decision then became the final decision of the Commissioner,
28

1 allowing this Court to review the decision. See 42 U.S.C. §§
2 405(g), 1383(c).

3
4 **STANDARD OF REVIEW**

5
6 This court reviews the Administration's decision to determine
7 if it is free of legal error and supported by substantial evidence.
8 See Brewes v. Comm'r of Soc. Sec. Admin., 682 F.3d 1157, 1161 (9th
9 Cir. 2012). "Substantial evidence" is more than a mere scintilla,
10 but less than a preponderance. Garrison v. Colvin, 759 F.3d 995,
11 1009 (9th Cir. 2014). To determine whether substantial evidence
12 supports a finding, "a court must consider the record as a whole,
13 weighing both evidence that supports and evidence that detracts from
14 the [Commissioner's] conclusion." Aukland v. Massanari, 257 F.3d
15 1033, 1035 (9th Cir. 2001). As a result, "[i]f the evidence can
16 reasonably support either affirming or reversing the ALJ's
17 conclusion, [a court] may not substitute [its] judgment for that of
18 the ALJ." Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir.
19 2006).

20
21 **PLAINTIFF'S CONTENTION**

22
23 Plaintiff asserts that the ALJ improperly rejected the opinion
24 of treating physician, Dr. Geisbrecht, in favor of the opinion of
25 non-examining medical expert, Dr. Williams. (See Joint Stip. at 4-
26 10).

1 Defendant asserts that the ALJ properly rejected Dr.
2 Geisbrecht's opinion for the following reasons: (1) his opinion was
3 "inconsistent with his own treatment notes and not supported by the
4 [Plaintiff's] medical records," (Joint Stip. at 12); (2) while the
5 ALJ gave more weight to the opinion of Dr. Williams, the ALJ
6 properly adopted neither Dr. Geisbrecht's or Dr. Williams' opinion
7 because both opinions conflicted with other evidence in the record,
8 (Joint Stip. at 10), and (3) little weight was given to Dr. Williams
9 because the medical records and Plaintiff's testimony revealed that
10 Plaintiff "is capable of more than simple repetitive tasks." (AR
11 16).

12
13
14 Social Security regulations require the Agency to "evaluate
15 every medical opinion we receive," giving more weight to evidence
16 from a claimant's treating physician. 20 C.F.R. § 404.1527(c). If
17 the treating or examining physician's opinions are not contradicted,
18 they can only be rejected with clear and convincing reasons. Lester
19 v. Chater, 81 F.3d 821, 830 (9th Cir. 1995). Where a treating or
20 examining physician's opinion is contradicted by another doctor, the
21 "[Commissioner] must determine credibility and resolve the
22 conflict." Valentine v. Comm'r of Soc. Sec. Admin., 574 F.3d 685,
23 692 (9th Cir. 2009) (quoting Thomas v. Barnhart, 278 F.3d 947, 956-
24 57 (9th Cir. 2002)). "An ALJ may reject the testimony of an
25 examining, but non-treating physician, in favor of a non-examining,
26 non-treating physician when he gives specific, legitimate reasons
27 for doing so, and those reasons are supported by substantial record
28 evidence." Lester, 81 F.3d at 831, (as amended) (Apr. 9, 1996)

1 (quoting Roberts v. Shalala, 66 F.3d at 179, 184 (9th Cir. 1995)).
2 While the opinion of a nonexamining physician cannot by itself
3 constitute substantial evidence that justifies rejecting the opinion
4 of a treating physician, Lester, 81 F.3d at 831, it may serve as
5 substantial evidence when the opinion is consistent with
6 "independent clinical findings or other evidence in the record."
7 Thomas, 278 F.3d 947 at 957. An ALJ satisfies the "substantial
8 evidence" requirement by "setting out a detailed and thorough
9 summary of the facts and conflicting evidence, stating his
10 interpretation thereof and making findings." Garrison v. Colvin,
11 759 F.3d 995, 1012 (9th Cir. 2014) (citations omitted). Dr.
12 Williams' opinion contradicted the opinion of Dr. Geisbrecht.
13 Accordingly, the ALJ was required to provide specific and legitimate
14 reasons to reject Dr. Geisbrecht's opinion. See Ghanim v. Colvin,
15 763 F.3d 1154, 1161 (9th Cir. 2014).

16
17 As set forth below, the ALJ's findings that Dr. Geisbrecht's
18 opinion was inconsistent with his own treatment notes, not supported
19 by the medical record as a whole and contradicted by Plaintiff's own
20 testimony constituted specific and legitimate reasons for rejecting
21 the opinion.

22
23 The ALJ properly found that Dr. Geisbrecht's opinion was
24 contradicted by his own treatment notes. (AR 16). Multiple
25 previous examinations and progress notes from Dr. Geisbrecht's
26 clinic indicated that the Plaintiff routinely wore clean and
27 appropriate clothing, was well-groomed, made no unusual movements or
28 behaviors, smiled and actively participated in treatments. (See AR

1 384, 387-96, 412, 429). Such normal behavior contradicts Dr.
2 Geisbrecht's opinion that Plaintiff was severely limited in terms of
3 concentration, understanding, social interaction and adaptation, and
4 was a specific and legitimate reason to reject Dr. Geisbrecht's
5 opinion. (See AR 458-59). See Bayliss v. Barnhart, 427 F.3d 1211,
6 1216 (9th Cir. 2005) (upholding ALJ's rejection of treating
7 physician's opinion because his own clinical notes contradicted his
8 own opinion); Noe v. Apfel, 6 Fed.Appx. 587, 588 (9th Cir. 2001)
9 (ALJ's examples of treating physician's notes contradicting her
10 ultimate conclusion was a specific and legitimate reason to reject
11 the opinion).

12
13
14 Plaintiff asserts that the objective medical record supports
15 Dr. Geisbrecht's opinion because clinical findings showed that
16 Plaintiff suffers from major depression. (Joint Stip. at 5).
17 However, the record as a whole, including Dr. Geisbrecht's own
18 notes, illustrate only recurring symptoms of moderate depression and
19 sadness with minimal to no mention of any extreme limitations or
20 obstacles. During a September 25, 2012 examination Plaintiff was
21 appropriately dressed, well-groomed, appearing depressed but
22 presenting a clear thought process and no indication of side effects
23 was listed by the treating physician. (AR 409). At a January 28,
24 2013, follow-up appointment, Plaintiff appeared well-groomed,
25 exhibited improved eye contact, a "little brighter" affect and
26 linear thought process. (AR 301). During a February 22, 2013
27 examination, Plaintiff was alert and oriented and stated that his
28 overall depression had decreased since he began treatment. (AR

1 395). During an April 3, 2013, meeting Plaintiff actively
2 participated and meaningfully contributed to group treatment, was
3 alert and oriented, well-groomed, exhibited normal speech, normal
4 eye contact and described his mood as happy and as an "8 out of 10."
5 (AR 393). These notes directly contradicted Dr. Giesbrecht's
6 assertion that Plaintiff has extreme limitations in the ability to
7 adhere to basic standards of cleanliness, get along with others
8 without exhibiting behavioral extremes and that Plaintiff was prone
9 to "added anger, irritability and . . . [could] become easily
10 frustrated and withdrawn from others." (AR 458). See Connett v.
11 Barnhart, 340 F.3d 871, 874-75 (9th Cir. 2003) (ALJ set forth
12 specific, legitimate reasons for rejecting treating physician's
13 opinion because it was "not supported . . . by his own notes. His
14 own conclusions also had multiple inconsistencies with all other
15 evaluations."); Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th Cir.
16 2001) (upholding ALJ's rejection of treating physician's opinion
17 because it was "unsupported by rationale or treatment notes, and
18 offered no medical findings to support the existence of
19 [Plaintiff's] alleged conditions"); Morgan v. Comm'r of Soc. Sec.,
20 169 F.3d 595, 600 (9th Cir. 1999) (upholding ALJ's rejection of
21 treating physician's opinion because the level of impairment
22 indicated by the treating physician was "unreasonable given the
23 description of [Plaintiff's] symptoms in [the treating physician's
24 reports] and other evidence in the record").
25
26

27 Additionally, during a May of 2013 appointment, Plaintiff
28 continuously described his mood as either an 8 or 9 out of 10 by the

1 end of each examination and continued to actively participate in his
2 treatments. (See AR 324-26). During a January 10, 2014,
3 examination, Plaintiff was dressed appropriately, well-groomed,
4 smiling, friendly, had an organized thought process, was without
5 evidence of psychotic behavior or mania and described his mood as
6 "depressed but easing." (AR 429). These notes were inconsistent
7 with Dr. Geisbrecht's contention that Plaintiff may not want to get
8 out of bed, care for his basic needs or interact appropriately with
9 others in a social setting. (AR 459).

11
12 The ALJ properly discounted Dr. Geisbrecht's opinion because it
13 was unsupported by the medical record as a whole. The side effects
14 that Dr. Geisbrecht listed in the Residual Functional Questionnaire,
15 such as drowsiness, pain, blurred vision and headaches, were not
16 mentioned in any treatment or progress notes. In addition, Dr.
17 Geisbrecht's opinion that Plaintiff had extreme to marked mental
18 limitations, including the ability to maintain attention and
19 concentration, maintain appropriate behavior, adhere to basic
20 standards of neatness and cleanliness, and work in coordination with
21 or in proximity to others without being distracted by them, were not
22 mentioned during any treatment examination notes by Dr. Geisbrecht
23 or his staff. (AR 459-49). Other medical records did not indicate
24 any mental limitations, physical limitations or pain, except prior
25 to Plaintiff's hernia surgery. (See AR 353). Plaintiff testified
26 that the pain in his hernia and his mental problems had decreased
27 since his hernia surgery. (AR 59-60). See Rollins v. Massanari,
28 261 F.3d 853, 857 (9th Cir. 2001) (upholding ALJ's rejection of

1 treating physician's opinion because they "were not supported by any
2 findings made by any doctor, including [the treating physician]");
3 Allison v. Astrue, 425 Fed.Appx. 636, 639 (9th Cir. 2011) (upholding
4 ALJ's rejection of treating physician's opinion after finding that
5 the treating physician "presented no support for his opinion");
6 Stout v. Comm'r of Soc. Sec. Admin., 191 Fed.Appx. 554, 555 (9th
7 Cir. 2006) (upholding ALJ's decision to reject treating mental
8 healthcare provider because the provider's opinion was devoid of any
9 clinical findings or rationale to support his conclusion).

11
12 The ALJ's finding that Plaintiff's own testimony contradicted
13 Dr. Geisbrecht's opinion was also a specific and legitimate reason
14 to reject Dr. Geisbrecht's opinion. During the hearing, Plaintiff
15 testified that he had "good days and bad days" but "basically [had]
16 improved;" could fix meals for himself; takes care of his personal
17 hygiene and dressing; partake in daily activities, such as group
18 meetings; takes the bus; liked to "stay busy;" and attends PTSD,
19 stress and mental health meetings approximately once or twice a
20 week. (AR 53-56). Plaintiff also testified that, although he did
21 not believe he could handle a full-time job, he could possibly work
22 part-time. (AR 61). Plaintiff also expressed that some days he
23 would get paranoid and not feel safe leaving the house, but he did
24 go on walks, go to the store and go to the library. (AR 55). The
25 ALJ properly found that Plaintiff's testimony did not support his
26 allegations of such extreme and limited mental and physical
27 capabilities. Albeit somewhat limited, Plaintiff was clearly able
28 to care for himself and partake in daily life to a degree that would

