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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MICHAEL AARON M.,¹)	NO. CV 19-9361-KS
Plaintiff,)	
v.)	MEMORANDUM OPINION AND ORDER
ANDREW M. SAUL, Commissioner)	
of Social Security,)	
Defendant.)	
_____)	

INTRODUCTION

Michael Aaron M. (“Plaintiff”) filed a Complaint on October 31, 2019, seeking review of the denial of his application for Disability Insurance benefits (“DIB”) (the “Complaint”). (Dkt. No. 1.) On January 31, 2020, the parties consented, pursuant to 28 U.S.C. § 636(c), to proceed before the undersigned United States Magistrate Judge. (Dkt. Nos. 14-16.) On November 3, 2020, the parties filed a Joint Stipulation (“Joint Stip.”). (Dkt. No. 25.) Plaintiff seeks an order remanding for further proceedings. (Joint Stip. at 20.) The Commissioner requests that the ALJ’s decision be affirmed or, in the alternative, remanded for further

¹ Partially redacted in compliance with Federal Rule of Civil Procedure 5.2(c)(B) and the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States.

1 proceedings. (*See id.* at 20-21.) The Court has taken the matter under submission without oral
2 argument.

4 SUMMARY OF ADMINISTRATIVE PROCEEDINGS

5
6 In May 2016, Plaintiff, who was born on July 8, 1977, filed an application for DIB.²
7 (*See* Administrative Record (“AR”) 89, 170; Joint Stip. at 2.) Plaintiff alleged disability
8 commencing February 16, 2016 due to: back injury, diabetes, diabetic cataracts, depression,
9 skin problems on hands, insomnia, migraines, knee pain, and diarrhea. (AR 170, 198.)
10 Plaintiff previously worked as a cashier-checker (DOT³ 211.462-014). (AR 38, 199.) After
11 the Commissioner denied Plaintiff’s application initially (AR 86) and on reconsideration (AR
12 98), Plaintiff requested a hearing (AR 115-16). Administrative Law Judge Susanne M.
13 Cichanowicz (the “ALJ”) held on a hearing on July 17, 2018. (AR 44.) Plaintiff and a
14 vocational expert testified. (AR 48-76.) On August 22, 2018, the ALJ issued an unfavorable
15 decision, denying Plaintiff’s application. (AR 18-39.) On May 17, 2019, the Appeal Council
16 denied Plaintiff’s request for review. (AR 7-12.)

18 SUMMARY OF ADMINISTRATIVE DECISION

19
20 The ALJ found that Plaintiff met the insured status requirements of the Social Security
21 Act through June 30, 2022. (AR 23.) The ALJ next found that Plaintiff had not engaged in
22 substantial gainful activity since her alleged onset date of February 16, 2016. (*Id.*) The ALJ
23 further determined that Plaintiff had severe impairments of obesity and lumbar degenerative
24 disease with spasm and lumbar musculoligamentous injury. (AR 24.) In reaching this
25 conclusion, she found, as relevant here, that Plaintiff’s depression and anxiety were non-severe
26

27 ² Plaintiff was 37 years old on the alleged onset date and thus met the agency’s definition of a younger person. *See*
28 20 C.F.R. § 404.1563(c).

³ “DOT” refers to the *Dictionary of Occupational Titles*.

1 impairments because, “considered singly and in combination, [they] do not cause more than
2 minimal limitation in [Plaintiff’s] ability to perform basic mental work activities.” (AR 26.)
3 The ALJ further concluded that Plaintiff did not have an impairment or combination of
4 impairments that met or medically equaled the severity of any impairments listed in 20 C.F.R.
5 part 404, subpart P, appendix 1 (20 C.F.R. §§ 404.1520(d), 404.1525, 404.1526). (AR 29.)
6

7 The ALJ determined that Plaintiff had the residual functional capacity (“RFC”) “to
8 perform medium work as defined in 20 C.F.R. § 404.1567(c) and the following limitations:
9 lifting, carrying, pushing, and pulling up to 50 pounds occasionally and 25 pounds frequently;
10 standing or walking for about six hours out of an eight-hour workday; sitting for about six
11 hours out of an eight-hour workday; and frequently climbing ramps or stairs, occasionally
12 climbing ladders, ropes, or scaffolds, and frequently balancing, stooping, kneeling, crouching
13 and crawling.” (AR 30.) The ALJ found that Plaintiff was able to perform his past relevant
14 work as a cashier-checker, which did not require the performance of work-related activities
15 precluded by Plaintiff’s RFC. (AR 38.) Accordingly, the ALJ determined that Plaintiff had
16 not been under a disability, as defined in the Social Security Act, from the alleged onset date
17 through the date of the ALJ’s decision. (AR 39.)
18

19 **STANDARD OF REVIEW**

20

21 Under 42 U.S.C. § 405(g), this Court reviews the Commissioner’s decision to determine
22 whether it is free from legal error and supported by substantial evidence in the record as a
23 whole. *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007). “Substantial evidence is ‘more than
24 a mere scintilla but less than a preponderance; it is such relevant evidence as a reasonable mind
25 might accept as adequate to support a conclusion.’” *Gutierrez v. Comm’r of Soc. Sec.*, 740
26 F.3d 519, 522-23 (9th Cir. 2014) (internal citations omitted). “Even when the evidence is
27 susceptible to more than one rational interpretation, we must uphold the ALJ’s findings if they
28

1 are supported by inferences reasonably drawn from the record.” *Molina v. Astrue*, 674 F.3d
2 1104, 1110 (9th Cir. 2012).

3
4 Although this Court cannot substitute its discretion for the Commissioner’s, the Court
5 nonetheless must review the record as a whole, “weighing both the evidence that supports and
6 the evidence that detracts from the [Commissioner’s] conclusion.” *Lingenfelter v. Astrue*, 504
7 F.3d 1028, 1035 (9th Cir. 2007) (internal quotation marks and citation omitted); *Desrosiers v.*
8 *Sec’y of Health and Hum. Servs.*, 846 F.2d 573, 576 (9th Cir. 1988). “The ALJ is responsible
9 for determining credibility, resolving conflicts in medical testimony, and for resolving
10 ambiguities.” *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995).

11
12 The Court will uphold the Commissioner’s decision when the evidence is susceptible to
13 more than one rational interpretation. *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir.
14 2005). However, the Court may review only the reasons stated by the ALJ in her decision
15 “and may not affirm the ALJ on a ground upon which he did not rely.” *Orn*, 495 F.3d at 630;
16 *see also Connett v. Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003). The Court will not reverse
17 the Commissioner’s decision if it is based on harmless error, which exists if the error is
18 “‘inconsequential to the ultimate nondisability determination,’ or if despite the legal error, ‘the
19 agency’s path may reasonably be discerned.’” *Brown-Hunter v. Colvin*, 806 F.3d 487, 492
20 (9th Cir. 2015) (internal citations omitted).

21 22 **DISCUSSION**

23
24 Plaintiff presents the Court with one issue for consideration: whether the ALJ erred in
25 failing to find that Plaintiff’s mental impairments were “severe.” (Joint Stip. at 3.) For the
26 reasons discussed below, the Court concludes that the ALJ did not err in finding Plaintiff’s
27 mental impairments non-severe. Accordingly, the ALJ’s decision must be affirmed.

28 //

1 **I. Applicable Law**

2
3 At step two of the sequential analysis, the ALJ must determine whether the claimant has
4 a medically determinable impairment, or combination of impairments, that is “severe.” The
5 Commissioner defines a severe impairment as “[a]n impairment or combination of
6 impairments . . . [that] significantly limit[s] your physical or mental ability to do basic work
7 activities” and lasted, or is expected to last, for a continuous period of at least 12 months. 20
8 C.F.R. §§ 404.1522, 404.1520(a)(4)(ii) (you are not disabled if you do not have a severe
9 medically determinable physical or mental impairment, or combination of impairments, that
10 meets the 12-month duration requirement in 20 C.F.R. § 404.1509). “Basic work activities”
11 means the “abilities and aptitudes necessary to do most jobs, including, *inter alia*:
12 “understanding, carrying out, and remembering simple instructions; use of judgment;
13 responding appropriately to supervision, co-workers and usual work situations; and dealing
14 with changes in a routine work setting.” 20 C.F.R. § 404.1522.

15
16 “An impairment or combination of impairments may be found not severe *only if* the
17 evidence establishes a *slight* abnormality that has no more than a *minimal* effect on an
18 individual’s ability to work.” *Webb v. Barnhart*, 433 F.3d 683, 686 (9th Cir. 2005) (emphasis
19 added) (citations and internal quotation marks omitted). If “an adjudicator is unable to
20 determine clearly the effect of an impairment or combination of impairments on the
21 individual’s ability to do basic work activities, the sequential evaluation should not end with
22 the not severe evaluation step.” *Id.* at 687 (citation and internal quotation marks omitted).
23 “Step two, then, is a *de minimis* screening device [used] to dispose of groundless claims, and
24 an ALJ may find that a claimant lacks a medically severe impairment or combination of
25 impairments only when his conclusion is clearly established by medical evidence.” *Id.*
26 (emphasis added) (citations and internal quotation marks omitted).

27 //

28 //

1 **II. Background**
2

3 In June 2016, Plaintiff completed a Function Report in which he reported, as relevant
4 here, the symptoms he experienced as a result of his mental impairment. (AR 205-13.) He
5 described that his daily activities consisted of having breakfast, brushing his teeth, eating
6 dinner, playing video games, and going to bed. (AR 206.) He did not care for any other people
7 or animals, he did not need reminders to take care of personal needs and grooming, but he did
8 need reminders to take medicine. (AR 206-07.) He did not prepare his own meals or do
9 household chores. (AR 207-08.) He could drive, shop in stores, and manage his finances.
10 (AR 208.) His hobbies included playing video games and watching television. (AR 209.) He
11 did not report that his condition impact any of his mental faculties. (AR 210.) He stated that
12 he could pay attention, occasionally finish what he started, and followed instructions “well
13 enough to get by.” (*Id.*) He got along “ok” with authority figures and had never been fired or
14 laid off from a job because of interpersonal problems. (AR 211.) He stated that he handled
15 stress and changes in routine “not well.” (*Id.*)
16

17 The record contains the following evidence concerning Plaintiff’s alleged mental
18 impairment. In June 2016, Ernest A. Bagner III, M.D., a board eligible psychiatrist, completed
19 a complete psychiatric evaluation of Plaintiff. (AR 349-53.) Plaintiff reported to Dr. Bagner
20 that he experienced depression, nervousness, helplessness, hopelessness, and low motivation;
21 and had problems with concentration and memory. (AR 349.) He denied suicidal or homicidal
22 ideation, and had no prior psychiatric treatment, hospitalizations, or mental health records for
23 Dr. Bagner’s review. (AR 350.) Plaintiff reported that his daily activities consisted of
24 brushing his teeth, eating, playing computer games, watching television, and going to bed; he
25 could dress and bathe independently, and could handle his own finances. (AR 351.) He had
26 a fair relationship with his family and poor relationships with friends. (*Id.*) Dr. Bagner’s
27 mental status examination (“MSE”) revealed the following findings: tense and cooperative
28 attitude; poor eye contact; clear and coherent speech; depressed mood and appropriate affect;

1 normal thought processes; no delusions or hallucinations; orientation to time, place, person,
2 and purpose; ability to recall 3 out of 3 objects immediately, and 1 out of 3 objects in 5 minutes;
3 ability to recall what he had for breakfast and his birthday; normal fund of information and
4 intelligence; and normal insight and judgment. (AR 351-52.) Dr. Bagner diagnosed Plaintiff
5 with major depressive disorder with anxiety, and made the following functional assessment:
6 Plaintiff was mildly limited in his ability to follow simple oral and written instructions, to
7 comply with job rules such as safety and attendance, to respond to changes in routine work
8 setting, and in his daily activities; and he was moderately limited in his abilities to follow
9 detailed instruction, to interact appropriately with the public, coworkers and supervisors, and
10 to respond to work pressure in a usual work setting. (AR 352-53.) Dr. Bagner's prognosis
11 was fair with consistent treatment. (AR 353.)

12
13 In August 2016, Plaintiff's condition was evaluated by a State Disability Determination
14 Service ("DDS") psychological consultant J. McWilliams, Ph.D. in connection with Plaintiff's
15 initial disability determination. Dr. McWilliams found that Plaintiff had medically
16 determinable impairments in the form of affective disorders. (AR 82.) He had no restriction
17 in activities of daily living and no repeated episodes of decompensation, and mild difficulties
18 in maintaining social functioning and in maintaining concentration, persistence, or pace. (*Id.*)
19 Dr. McWilliams observed that Plaintiff had complained to Dr. Bagner of depression,
20 nervousness, helplessness, and low motivation, but he had not received psychological
21 treatment or medication. (*Id.*) He further noted that Dr. Bagner's MSE revealed mostly
22 normal findings and he diagnosed Plaintiff with anxiety. (*Id.*) Dr. McWilliams found
23 Plaintiff's mental impairment not severe and gave Dr. Bagner's opinion about Plaintiff's
24 ability to follow detailed instructions and engage in social interaction little weight "as they are
25 consistent with MSE." (*Id.*) In October 2016, Plaintiff's condition was evaluated by DDS
26 consultant Clare McGinness in connection with his disability decision on reconsideration.
27 (AR 93-94.) McGinness made identical findings to Dr. McWilliams. (*See id.*) She noted that
28 the record did not indicate that Plaintiff had sought treatment for mental health issues. (AR

1 94.) Moreover, Dr. Bagner’s opinion revealed only mild findings that were not suggestive of
2 a disabling impairment. (*Id.*)
3

4 In 2016, Plaintiff began receiving treatment from Orange County Behavioral Health
5 Services (“BHS”) for his mental health issues. (AR 584-87 (listing dates of service at BHS).)
6 In November 2016, Plaintiff reported symptoms of depression, including intermittent passive
7 suicidal ideation. (AR 497-98.) He had no hospitalizations of treatment for psychiatric issues.
8 (AR 497-98, 512.) He reported at his psychosocial evaluation that he constantly worried about
9 finances and his health; experienced depression, anxiety, and anger; had trouble sleeping; and
10 did not want to do anything when he was depressed. (AR 507-08, 512.) A MSE revealed
11 largely normal findings in all areas of mental functioning—Plaintiff was cooperative and
12 oriented; his mood was euthymic; his thought processes were normal; he had good impulse
13 control; and he lacked delusions, hallucinations, or preoccupations. (AR 498.) Findings from
14 his November 2016 psychosocial evaluation also showed largely normal findings, apart from
15 depressive preoccupations and impaired concentration and memory. (AR 510.) Plaintiff
16 reported in December 2016 that due to his depressed mood, anger, anxiety, worry, and
17 isolation, he could not socialize with people outside of his family and wanted to sleep all day.
18 (AR 503.) At this point, he was diagnosed for the first time with major depressive disorder,
19 recurrent, moderate. (AR 586.) However, a note from his December 2016 examination stated
20 that he could figure out how to do things mostly without explanation, he attended
21 appointments, and was focused on the future. (AR 494.)
22

23 Plaintiff’s MSEs over the ensuing months reveal largely normal and consistent findings.
24 In February 2017, Plaintiff reported that he spent his days playing video games and watching
25 television. (AR 575.) His MSEs from February, March, and May 2017 consistently reveal
26 normal findings, including euthymic mood; appropriate affect; cooperative and responsive
27 attitude; normal thought processes; mood congruent; no delusions, hallucinations, or
28 preoccupations; fair orientation, insight, and judgment; and some suicidal ideation, but no

1 thoughts of self-harm. (AR 569-70, 572-74, 576; *see also* AR 533 (May 2017 assessment).)
2 Plaintiff was prescribed Cymbalta, an anti-depressant, and reported improvement after taking
3 the medication. (AR 570.) In June 2016, he reported stable mood, denied extended periods
4 of depression of anxiety, reported intermittent thoughts of not wanting to wake up, but denied
5 intent or plan. (AR 566.) He stated that he had been “putting up gaming videos” on YouTube
6 for the past year, which had been “fun,” and he was “working towards increasing his
7 subscribers.” (*Id.*) His MSE produced normal results with unremarkable findings, and his
8 medication was continued. (AR 566-67.)
9

10 In July 2017, Plaintiff reported that he was feeling “alright” and had a stable mood; he
11 stated that he recently attended an Anime Expo, saved money to attend the event, and was able
12 to be at the event over a three-day period. (AR 529, 563.) Although he continued to have
13 intermittent passive suicidal thoughts, he had no active intent or plan for self-harm. (AR 563.)
14 In August 2017, Plaintiff reported that he spent the vast majority of the day watching YouTube
15 or playing video games. (AR 528.) However, he also reported that his mood was stable with
16 intermittent periods of low mood; and a MSE revealed normal findings, largely consistent with
17 the findings from earlier months. (AR 558-59.) Plaintiff reported that he did not experience
18 suicidal ideation. (AR 559.) In October 2017, Plaintiff failed to show up to his scheduled
19 appointment and the provider was unable to reach Plaintiff. (AR 525.)
20

21 In December 2017, Plaintiff reported that he had a stable mood and was doing well
22 overall, with intermittent low mood periods related to psychosocial stressors. (AR 555.) In
23 early April 2018, he stated that his mood and energy levels were stable, but that his anxiety
24 had increased due to external factors and pain related to his physical impairments. (AR 550-
25 51.) Nonetheless, at both examinations, Plaintiff had largely normal MSE findings, which
26 were generally consistent with the findings from earlier months. (AR 551, 555.) At a late
27 April 2018 appointment, Plaintiff reported that when he felt depressed, he did not play video
28 games, but was able to distract himself from his depression and anxiety by watching television.

1 (AR 506.) His MSE revealed normal examination findings, consistent with earlier findings.
2 (AR 506-07.) In May 2018, although Plaintiff reported that his depressed mood and difficulty
3 sleeping made it difficult to focus on tasks (AR 488), his MSE again revealed normal MSE
4 findings, with normal speech and activities; cooperative attitude; euthymic mood; normal
5 thought processes; and no suicidal or homicidal ideation, delusions, hallucinations, or
6 preoccupations. (AR 533-34.)

7
8 In October 2018, Brian Choi, M.D., Plaintiff's psychiatrist, completed a Mental Medical
9 Source Statement. (AR 476-81.) He observed that Plaintiff had major depressive disorder,
10 recurrent, moderate; and anxiety disorder, unspecified. (AR 476.) Plaintiff had a "fair"
11 response to treatment. (*Id.*) He opined that Plaintiff's depression and low energy resulted in
12 Plaintiff having a difficult time following through with tasks in a timely manner. (*Id.*) He
13 identified Plaintiff as having symptoms, including, but not limited to, pervasive loss of interest,
14 decreased energy, feelings of guilt and worthlessness, impulse control impairment, difficulty
15 thinking or concentrating, persistent disturbances of mood or affect, emotional withdrawal or
16 isolation, intense and unstable interpersonal relationships, and sleep disturbance. (AR 477.)
17 Dr. Choi opined that Plaintiff had the following limitations: he was "limited but satisfactory"
18 in his abilities to understand and remember short and simple instructions, carry out very short
19 and simple instructions, maintain regular attendance and be punctual, ask simple questions or
20 request assistance, be aware of actual hazards and take precautions, interact appropriately with
21 the general public, maintain socially appropriate behavior, adhere to standards of measures
22 and cleanliness, travel in unfamiliar places, and use public transportation; he was "seriously
23 limited" in his abilities to remember work-like procedures, sustain an ordinary routine without
24 supervision, work in coordination with or proximity to others without being distracted, make
25 simple work-related decisions, perform at a consistent pace without an unreasonable number
26 and length of rest periods, accept instructions and respond appropriately to criticism from
27 supervisors, get along with coworkers or peers without unduly distracting them or exhibiting
28 behavioral extremes, respond appropriately to changes in work setting, deal with normal work

1 stress, understand and remember detailed instructions, carry out detailed instructions, set
2 realistic goals and make plans independently of others, and deal with stress of semi-skilled
3 and skilled work; and he was “unable to meet competitive standards” in his abilities to
4 maintain attention for a two-hour segment, and complete a normal workday and work week
5 without interruptions from psychological symptoms. (AR 478-79.) Dr. Choi opined that
6 Plaintiff’s depressed mood and preoccupations made it difficult for him to remember details
7 and he required significant assistance to set goals. (*Id.*) He noted that Plaintiff was likely to
8 be absent from work more than four days per month due to his condition. (AR 480.)

9 10 **III. ALJ’s Decision**

11
12 The ALJ found that Plaintiff’s depression and anxiety, although medically determinable
13 impairments, were non-severe, considered singly and in combination, because they “d[id] not
14 cause more than minimal limitation in [Plaintiff’s] ability to perform basic mental work
15 activities.” (AR 26.) “In making this finding,” the ALJ explained, she “considered the four
16 broad areas of mental functioning set out in the disability regulations for evaluating mental
17 disorders and in the Listing of Impairments[,]” *i.e.* the “paragraph B criteria”:
18 (1) understanding, remembering, or applying information; (2) interacting with others;
19 (3) concentrating, persisting, or maintaining pace; and (4) adapting or managing oneself. (*Id.*)
20 The ALJ found that Plaintiff had only a mild limitation in each of the four areas. (*Id.*)

21
22 The ALJ found that substantial record evidence supported her finding, including the
23 DDS consultants’ opinions, which found that Plaintiff’s mental condition was non-severe.
24 (*Id.*) The ALJ gave the DDS consultants’ opinions significant weight because they examined
25 Plaintiff and reviewed his records; they were familiar with the Agency’s disability guidelines;
26 and their opinions were consistent with the medical evidence in the record as a whole, which
27 showed normal MSE findings and little treatment. (*Id.*; *see also* AR 32.) The ALJ also found
28 that the objective record evidence supported her finding; she summarized in great detail

1 Plaintiff's largely normal mental findings throughout the record, including the consultative
2 examiners report and monthly to bi-monthly MSE findings between November 2016 and May
3 2018. (AR 26-28.) The ALJ also found that the record showed no evidence of extended
4 hospitalizations, a structured environment, or an assisted care arrangement; and Plaintiff
5 engaged in many activities of daily living, further demonstrating that he had no more than
6 mild mental limitations. (AR 28.) Finally, in a Function Report, Plaintiff himself did not
7 indicate that his conditions affected his memory, concentration, understanding, or abilities to
8 complete tasks, follow instructions, or getting along with others. (AR 29 (citing AR 210).)

9
10 The ALJ added that her assessment of Plaintiff's RFC "reflects the degree of limitation
11 . . . in the 'paragraph B' mental function analysis." (AR 29.) She found that, *inter alia*,
12 Plaintiff's statements concerning the intensity, persistence, and limiting effects of his
13 symptoms were not entirely consistent with the evidence in the record because: (1) substantial
14 record evidence, including the opinions of DDS consultants, supported the RFC and Plaintiff's
15 ability to work; (2) Plaintiff had a history of conservative, routine treatment and many normal
16 and mild examination findings; and (3) Plaintiff engaged in activities of daily living that were
17 inconsistent with his subjective allegations and demonstrated his ability to work. (AR 31.)
18 The ALJ discounted Dr. Choi's check-the-box form opinion because it was not consistent with
19 the record evidence as a whole, which documents Plaintiff's history of conservative, routine
20 treatment and normal and mild mental examination findings; moreover, Dr. Choi was not
21 familiar with the Agency's precise disability guidelines. (AR 35.) The ALJ also gave little
22 weight to the opinion of Dr. Bagner because it was not consistent with the record as a whole,
23 and was too restrictive in light of the conservative, routine treatment of medications and
24 monthly therapy. (AR 35-36.)

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1 **IV. Discussion**

2
3 **A. Arguments of the Parties**

4
5 Plaintiff argues that the ALJ’s finding that he did not have a severe mental impairment
6 is not supported by substantial record evidence. Plaintiff notes that his MSEs since 2016
7 “show multiple positive findings including impaired concentration and memory; fair
8 judgment; depressed mood; decreased ability to concentrate; distractibility; fatigue/Loss of
9 Energy; fair impulse control; poor hygiene level; anger outburst; and suicidal ideation.” (Joint
10 Stip. at 7-9 (citing AR 488, 497-98, 503, 506, 508, 510, 533, 555, 558, 563, 570).) The record
11 also reveals “clinical diagnoses, which have consistently been noted as anxiety disorder and
12 major depressive disorder, recurrent, moderate.” (*Id.* at 9 (citing AR 584-87).)

13
14 In support of his contention that his depression was severe and significantly limited his
15 ability to perform work functions, Plaintiff points to the opinion of Dr. Choi, who found that
16 Plaintiff was seriously limited in his abilities to make simple work-related decisions, respond
17 appropriately to changes in a routine work setting, deal with normal work stress, respond
18 appropriately to criticisms from supervisors, and get along with coworkers without unduly
19 distracting them. (*Id.* at 9-10 (citing AR 478).) Plaintiff further points to the opinion of Dr.
20 Bagner, who opined that Plaintiff had findings and limitations consistent with the severe
21 mental impairment. (*Id.* at 10 (citing AR 352-53).) Finally, Plaintiff claims that the ALJ erred
22 by focusing on non-findings in the record, such as normal MSE results, or misconstruing
23 Plaintiff’s daily activities. (*Id.* at 10-11.) Accordingly, he contends that he has satisfied the
24 *de minimis* standard that his mental condition had more than a minimal effect on his ability to
25 work. (*Id.* at 11.)

26
27 Defendant responds that Plaintiff failed to meet his burden of showing that his mental
28 impairments limited his ability to perform basic work activities; specifically, the opinion and

1 objective evidence, the minimal and conservative mental health treatment Plaintiff received,
2 and Plaintiff's daily activities support the finding of a non-severe mental impairment. (*Id.* at
3 12-13.) Defendant argues that the ALJ offered ample explanation to support her findings that
4 Plaintiff suffered only mild limitation in all four areas of mental functioning. (*Id.* at 13.) And
5 Plaintiff's argument that the findings are not supported by substantial evidence is conclusory
6 and fails to preserve the issue for judicial review. (*Id.*) Even assuming the issue is preserved,
7 Defendant notes that the ALJ's decision *is* supported by substantial evidence, including the
8 DDS consultants' opinions, the normal MSE findings throughout the record, the fact that
9 Plaintiff only ever received minimal and conservative mental health treatment. (*Id.* at 14-16.)
10 Additionally, evidence of Plaintiff's daily activities is inconsistent with more than mild
11 limitations in mental functioning. (*Id.* at 17-18.) Defendant also contends that the ALJ
12 properly rejected the opinions of Drs. Choi and Bagner and so, Plaintiff's reliance on their
13 opinions is without merit. (*Id.* at 18-19.) Finally, Plaintiff's recitation of alleged positive
14 findings in the record is misleading because some of the relied-upon records are internally
15 inconstant and, at times, Plaintiff merely describes his subjective complaints and attempts to
16 transform them into objective evidence. (*Id.* at 19.)

17 18 **B. Analysis**

19
20 In the context of a claim under step two of the sequential analysis, the Court's inquiry
21 focuses on whether the medical evidence clearly establishes that, during the relevant period,
22 Plaintiff did not develop mental limitations that had "more than a minimal effect on" his ability
23 to work for at least 12 continuous months. *See Webb*, 433 F.3d at 686; 20 C.F.R.
24 § 404.1520(a)(4)(ii). The duration requirement of step two is not in dispute here—rather, the
25 Court inquires whether the ALJ's conclusion that Plaintiff's alleged mental impairment had
26 no more than a minimal effect of his ability to do work-related activities was "clearly
27 established." *Webb*, 433 F.3d at 687. The Court finds that it was.

28 //

1 The record evidence clearly establishes that Plaintiff had no more than a mild limitation
2 in any area of mental functioning. Between 2016 and 2018, despite reporting symptoms of
3 depression and anxiety, Plaintiff’s treatment notes reveal MSE findings and psychiatric
4 evaluations by qualified examiners, which consistently showed normal and unremarkable
5 findings, with only occasional mild limitations. (*See, e.g.*, AR 351 (June 2016 examination
6 by Dr. Bagner showing depressed mood but otherwise unremarkable findings); AR 498-99,
7 506-07, 510 (November 2016); AR 533-34, 576 (February 2017); AR 539-40 (October 2016),
8 543 (May 2018), 547 (April 2018), 551 (January 2018), 555 (December 2017), 559 (August
9 2017), 566-67 (June 2017), 569-70 (May 2017), 573 (March 2017), 579-80 (December 2016).)
10 Although Plaintiff occasionally reported suicidal ideation, his findings during the same MSEs
11 during which he made those reports reveal that his mood was noted as being “euthymic” (*i.e.*,
12 normal non-depressed, reasonably positive mood) (*see* AR 498-99, 566-67, 569-70, 573, 576).
13 *See Morgan v. Comm’r of Soc. Sec. Admin.*, 169 F.3d 595, 603 (9th Cir. 1999) (holding that
14 internal inconsistencies in medical evidence are relevant). Plaintiff cites to examples of
15 medical evidence in the record, which he alleges reflects evidence of his mental impairment.
16 (*See Joint Stip. at 7-9.*) Many of the examples Plaintiff cites, however, are medical notes
17 documenting Plaintiff’s subjective complaints. (*See, e.g.*, AR 497, 503, 555.) But Plaintiff’s
18 subjective claims are not transformed into objective evidence simply because a physician
19 recorded them. *See Ukolov v. Barnhart*, 420 F.3d 1002, 1005-06 (9th Cir. 2005) (doctors
20 recording of claimant’s subjective complaints did not support finding of impairment because
21 they were based solely on claimant’s perception or description of his problems). Thus, there
22 is no support in the objective record evidence for Plaintiff’s claim that he had a severe mental
23 impairment.

24
25 The ALJ’s decision is further supported by the fact that Plaintiff received only minimal
26 and conservative mental health treatment. *See Malloy v. Colvin*, 664 F. App’x 638, 641 (9th
27 Cir. 2016) (rejecting claimant’s assertion of severe mental impairment because evidence
28 showed minimal and inconsistent treatment for psychological symptoms). Plaintiff reported

1 to Dr. Bagner hat he had never previously been hospitalized for a psychiatric condition,
2 received outpatient treatment, or seen a psychiatrist. (AR 349-50.) The record reveals that
3 Plaintiff began receiving mental health treatment at BHS in late 2016, but his treatment was
4 limited to supportive therapy and medication (Cymbalta) (AR 501, 548, 552, 556, 559, 563,
5 567, 570, 573-74, 577, 580, 582). *See, e.g., Hesketh v. Berryhill*, 2017 WL 2256964, at *6
6 (D. Or. May 23, 2017) (collecting cases for proposition that use of Cymbalta is a conservative
7 treatment measure); *cf. Mary M. v. Comm’r of Soc. Sec.*, 2020 WL 2556353, at *2 (D. Or.
8 May 20, 2020) (stating that ALJ noted that claimant had conservative mental health treatment
9 including medication management and supportive therapy). Plaintiff does not argue and there
10 is no evidence in the record that he ever needed stronger medication or failed to seek more
11 aggressive treatment. Thus, the record evidence does not support that Plaintiff’s condition
12 was more severe than interpreted by the ALJ.

13
14 Finally, it was reasonable here for the ALJ to infer from evidence of Plaintiff’s daily
15 activities that his mental impairments did not impose significant limitations. As an initial
16 matter, Plaintiff’s objection to the ALJ’s reliance upon his daily activities in reaching his non-
17 severity finding is misplaced because “an ALJ is required to consider a claimant’s daily
18 activities in analyzing the severity of a mental impairment at step two.” *See Lindsay v.*
19 *Berryhill*, Case No. SACV 17-1545-AFM, 2018 WL 3487167, at *4 (C.D. Cal. July 18, 2018)
20 (citing 20 C.F.R. §§ 404.1520a(c)-(d)). Here, the ALJ properly relied on Plaintiff’s daily
21 activities. In Plaintiff’s June 2016 Function Report, he stated that he did not have problems
22 getting along with family, friends, neighbors, or others; he got along “ok” with authority
23 figures; and he had never been fired from work because of problems getting along with others.
24 (AR 210-11.) In June 2017, Plaintiff reported to his treating provider that he had been
25 uploading gaming videos to YouTube for the past year, which he enjoyed, and he planned
26 “working towards increasing his subscribers.” (AR 566.) And while Plaintiff notes that early
27 in his treatment, he experienced periods of depression and anger that impacted his daily
28 activities (*see, e.g.,* AR 497, 506-07), those examples were infrequent and he resumed his

1 normal daily activities as he received treatment for his condition. To the extent Plaintiff
2 disagrees with the ALJ's interpretation of the impact of Plaintiff's activities of daily living,
3 that is not a basis for remand. *See Molina*, 674 F.3d at 1110.

4
5 Plaintiff's additional arguments in support of remand are equally unavailing. He
6 contends that the record reveals "clinical diagnoses, which have consistently been noted as
7 anxiety disorder and major depressive disorder, recurrent, moderate." (Joint Stip. at 9 (citing
8 AR 584-87).) However, the existence of an impairment does not, by itself, establish either
9 work-related mental limitations or a presumption that an impairment is severe. *Sample v.*
10 *Schweiker*, 694 F.2d 639, 642-43 (9th Cir. 1982). Plaintiff also argues that the severe nature
11 of his mental impairment is supported by the opinions of Drs. Choi and Bagner. (Joint Stip.
12 at 9-10.) However, Plaintiff's argument is unpersuasive. After concluding that Plaintiff's
13 mental impairment was not severe, she continued to consider all of Plaintiff's impairments in
14 evaluation his disability claim, including those that were not severe. In doing so, the ALJ gave
15 little weight to the opinions of Drs. Choi and Bagner. (AR 35-36.) Plaintiff does not challenge
16 the ALJ's evaluation of the opinion evidence in this case, and there is no apparent basis to
17 support such a challenge.

18
19 Finally, Plaintiff asserts that the ALJ erred by focusing on "non-findings in the record."
20 (Joint Stip. at 10-11.) But Plaintiff's argument fails because the "non-findings" that he
21 identifies are the multiple and consistent normal MSE findings in the record, which clearly
22 support the ALJ's conclusion of nonseverity. Plaintiff's mere disagreement with the ALJ's
23 reliance on objective evidence and subsequent interpretation of that evidence is not evidence
24 of material error by the ALJ. *See Molina*, 674 F.3d at 1110.

25
26 Accordingly, the ALJ's decision must be AFFIRMED.

27 //

28 //

1 **CONCLUSION**

2

3 For all the foregoing reasons, the Court finds that the Commissioner’s decision is
4 supported by substantial record evidence and free from material legal error. Neither reversal
5 of the ALJ’s decision nor remand is warranted.

6

7 Accordingly, IT IS ORDERED that Judgment shall be entered affirming the decision of
8 the Commissioner of the Social Security Administration.

9

10 IT IS FURTHER ORDERED that the Clerk of the Court shall serve copies of this
11 Memorandum Opinion and Order and the Judgment on counsel for plaintiff and for defendant.

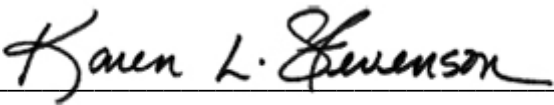
12

13 LET JUDGMENT BE ENTERED ACCORDINGLY

14

15 DATE: December 2, 2020

16

17 
18 KAREN L. STEVENSON
19 UNITED STATES MAGISTRATE JUDGE