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

DOMINIC I.,¹

Plaintiff,

v.

KILOLO KIJAKAZI, Acting
Commissioner of Social Security,

Defendant.

Case No. 2:20-cv-05737-MAA

**MEMORANDUM DECISION AND
ORDER AFFIRMING DECISION OF
THE COMMISSIONER**

On June 26, 2020, Plaintiff filed a Complaint seeking review of the Commissioner’s final decision denying his application for Supplemental Security Income pursuant to Title XVI of the Social Security Act. This matter is fully briefed and ready for decision. For the reasons discussed below, the Commissioner’s final decision is affirmed, and this action is dismissed with prejudice.

///

¹ Plaintiff’s name is partially redacted in accordance with Federal Rule of Civil Procedure 5.2(c)(2)(B) and the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States.

ADMINISTRATIVE HISTORY

1
2 On May 15, 2017, Plaintiff protectively filed an application for Supplemental
3 Security Income, alleging disability beginning on January 1, 2013. (Administrative
4 Record [AR] 20, 142.) Plaintiff alleged disability because of major depression and
5 schizophrenia. (AR 49.) After the application was denied initially, Plaintiff
6 requested a hearing before an Administrative Law Judge (“ALJ”). (AR 62-64.) At
7 a video hearing held on July 12, 2019, the ALJ heard testimony from Plaintiff, who
8 was represented by counsel, and from a vocational expert. (AR 31-48.)

9 In a decision dated July 29, 2019, the ALJ denied Plaintiff’s disability claim
10 after making the following findings under the Commissioner’s five-step evaluation.
11 (AR 20-27.) Plaintiff had not engaged in substantial gainful activity since May 15,
12 2017, the application date. (AR 22.) He had severe impairments consisting of
13 bipolar disorder; generalized anxiety disorder; schizotypal personality disorder; and
14 alcohol dependence disorder, in remission. (*Id.*) He did not have an impairment or
15 combination of impairments that met or medically equaled the severity of one of the
16 agency’s listed impairments. (AR 22-23.) He had a residual functional capacity
17 (“RFC”) to perform a full range of work at all exertional levels but with the
18 following nonexertional limitations: “[He] can perform simple, routine, and
19 repetitive tasks, but not at a production-rate pace. [He] can occasionally interact
20 with the public. [He] can make simple work-related decisions.” (AR 23.) He was
21 unable to perform his past relevant work as a retail store manager. (AR 26-27.)
22 However, he could perform other work in the national economy, in the occupations
23 of binder, laundry worker, and counter supply worker. (AR 27.) Accordingly, the
24 ALJ concluded that Plaintiff was not disabled, as defined by the Social Security
25 Act, since May 15, 2017, the application date. (*Id.*)

26 On April 21, 2020, the Appeals Council denied Plaintiff’s request for review.
27 (AR 1-6.) Thus, the ALJ’s decision became the final decision of the
28 Commissioner.

1 **DISPUTED ISSUE**

2 The sole disputed issue is whether the ALJ properly considered Plaintiff's
3 testimony. (ECF No. 23, Parties' Joint Stipulation ["Joint Stip."] at 4.)
4

5 **STANDARD OF REVIEW**

6 Under 42 U.S.C. § 405(g), the Court reviews the Commissioner's final
7 decision to determine whether the Commissioner's findings are supported by
8 substantial evidence and whether the proper legal standards were applied. *See*
9 *Treichler v. Commissioner of Social Sec. Admin.*, 775 F.3d 1090, 1098 (9th Cir.
10 2014). Substantial evidence means "more than a mere scintilla" but less than a
11 preponderance. *See Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Lingenfelter*
12 *v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007). Substantial evidence is "such
13 relevant evidence as a reasonable mind might accept as adequate to support a
14 conclusion." *Richardson*, 402 U.S. at 401. The Court must review the record as a
15 whole, weighing both the evidence that supports and the evidence that detracts from
16 the Commissioner's conclusion. *Lingenfelter*, 504 F.3d at 1035. Where evidence is
17 susceptible of more than one rational interpretation, the Commissioner's
18 interpretation must be upheld. *See Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir.
19 2007).
20

21 **DISCUSSION**

22 **A. Standard.**

23 An ALJ must make two findings in assessing a claimant's pain or symptom
24 testimony. *Treichler*, 775 F.3d at 1102; Social Security Ruling ("SSR") 16-3P,
25 2017 WL 5180304, at *3. "First, the ALJ must determine whether the claimant has
26 presented objective medical evidence of an underlying impairment which could
27 reasonably be expected to produce the pain or other symptoms alleged." *Treichler*,
28 775 F.3d at 1102 (citation omitted). "Second, if the claimant has produced that

1 evidence, and the ALJ has not determined that the claimant is malingering, the ALJ
2 must provide specific, clear and convincing reasons for rejecting the claimant’s
3 testimony regarding the severity of the claimant’s symptoms,” and those reasons
4 must be supported by substantial evidence in the record. *Id.*; *see also Marsh v.*
5 *Colvin*, 792 F.3d 1170, 1174 n.2 (9th Cir. 2015).

6 “A finding that a claimant’s testimony is not credible ‘must be sufficiently
7 specific to allow a reviewing court to conclude the adjudicator rejected the
8 claimant’s testimony on permissible grounds and did not arbitrarily discredit a
9 claimant’s testimony regarding pain.’” *Brown-Hunter v. Colvin*, 806 F.3d 487, 493
10 (9th Cir. 2015) (quoting *Bunnell v. Sullivan*, 947 F.2d 341, 345-46 (9th Cir. 1991)
11 (*en banc*)). “General findings are insufficient; rather, the ALJ must identify what
12 testimony is not credible and what evidence undermines the claimant’s complaints.”
13 *Brown-Hunter*, 806 F.3d at 493 (quoting *Reddick v. Chater*, 157 F.3d 715, 722 (9th
14 Cir. 1988)).

15 16 **B. Background.**

17 During the administrative hearing, Plaintiff testified as follows about his
18 history and symptoms:

19 He last worked in January 2013, as a jewelry store manager. (AR 37.) He
20 cannot hold a full-time job because his mental disorder “comes in waves.” (AR
21 38.) On some days, he cannot sleep, “[s]o it prevents [him] from getting up and
22 just getting going and doing anything at all.” (*Id.*) Because of his bipolar disorder,
23 he “can go through days with no sleep, and just overall severe depression[.]” (*Id.*)
24 He takes Alprazolam, approximately ten times per month at a low dosage, and it’s
25 “pretty effective.” (AR 39.)

26 He sees a therapist and a psychiatrist. (AR 39-40.) He believes that the
27 therapist is helping him, and he sees the psychiatrist primarily for medication
28 adjustments. (AR 40.) The medication keeps him from “feeling suicidal.” (*Id.*)

1 He frequently goes to Alcoholics Anonymous (“AA”) meetings, at least once per
2 week. (AR 41.) The meetings help “[t]o a certain degree.” (*Id.*)

3 He lives with his 80-year-old mother. (AR 41.) He performs caregiving
4 services for her. (*Id.*) He does “pretty much all the things that need to be done
5 around the house. Gardening, cleaning, cooking.” (*Id.*) He is able to go to the
6 grocery store. (*Id.*) He has “terrible anxiety” and nervousness around other people.
7 (*Id.*) He also feels claustrophobia. (AR 42.) On a typical day, he gets up “very
8 early,” cooks breakfast for his mother and himself, does the housework that needs
9 to be done, does some reading, and helps his mother stretch and exercise. (*Id.*) He
10 also practices playing the guitar and saxophone. (*Id.*)

11 12 **C. Analysis.**

13 The ALJ summarized Plaintiff’s allegations as follows:

14 [Plaintiff] alleged that he is unable to work due to mental
15 impairments, including bipolar disorder and anxiety (Testimony).

16 [Plaintiff] alleged that these would cause him to be off- task and to
17 miss work. [Plaintiff] testified that he is often unable to sleep, which
18 prevents him from work activity.

19 (AR 25.)

20 The ALJ then performed the agency’s two-step analysis. (*Id.*) At the first
21 step, the ALJ found that Plaintiff’s “medically determinable impairments could
22 reasonably be expected to cause the alleged symptoms[.]” (*Id.*) At the second step,
23 however, the ALJ found that Plaintiff’s “statements concerning the intensity,
24 persistence and limiting effects of these symptoms are not entirely consistent with
25 the medical evidence and other evidence in the record for the reasons explained in
26 this decision.” (*Id.*)

27 As an initial matter, Plaintiff argues that this analysis was insufficient
28 because “the ALJ nowhere connects any of [Plaintiff’s] testimony to the ALJ’s

1 analysis.” (Joint Stip. at 9.) To the contrary, the ALJ summarized Plaintiff’s
2 testimony (AR 25) and then stated detailed reasons for why that testimony was not
3 entirely consistent with the medical evidence and other evidence in the record (AR
4 25-26). These reasons were sufficiently specific for the Court to conclude that the
5 ALJ “did not arbitrarily discredit” Plaintiff’s testimony. *Brown-Hunter*, 806 F.3d at
6 493. In other words, the ALJ’s reasoning was sufficiently specific to “permit
7 meaningful review.” *Lambert v. Saul*, 980 F.3d 1266, 1277 (9th Cir. 2020).

8 The ALJ stated three categories of reasons for declining to credit Plaintiff’s
9 subjective complaints about his mental symptoms. (AR 25-26.) Each is reviewed
10 in turn.

11
12 **1. “inconsistent with the overall record.”**

13 The ALJ first stated that Plaintiff’s statements about his symptoms were
14 “inconsistent with the overall record.” (AR 25.)

15 “[A] finding that the claimant lacks credibility cannot be premised wholly on
16 a lack of medical support for the severity of his pain.” *Light v. Social Sec. Admin.*,
17 119 F.3d 789, 792 (9th Cir. 1997) (citing *Lester v. Chater*, 81 F.3d 821, 834 (9th
18 Cir. 1995)). But “[w]hile subjective pain testimony cannot be rejected on the sole
19 ground that it is not fully corroborated by objective medical evidence, the medical
20 evidence is still a relevant factor in determining the severity of the claimant’s pain
21 and disabling effects.” *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001); *see*
22 *also Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005) (“Although lack of
23 medical evidence cannot form the sole basis for discounting pain testimony, it is a
24 factor that the ALJ can consider in his credibility analysis.”). Here, the ALJ did not
25 rely solely on a lack of medical support to discount Plaintiff’s subjective complaints
26 but, rather, cited three categories of reasons that are discussed in this decision. As
27 to the first category of reasons, *i.e.*, “inconsisten[cy] with the overall record” (AR
28 25), the ALJ cited three types of medical evidence, which are reviewed in turn.

1 First, the ALJ stated that “[t]here is very little mental health treatment in the
2 record.” (AR 25.) The record shows that Plaintiff’s mental health treatment began
3 in May 2016 (AR 258), three years after his alleged onset date of January 1, 2013
4 (AR 50). The Ninth Circuit has “long held that, in assessing a claimant’s
5 credibility, the ALJ may properly rely on an unexplained or inadequately explained
6 failure to seek treatment or to follow a prescribed course of treatment.” *Molina v.*
7 *Astrue*, 674 F.3d 1104, 1113 (9th Cir. 2012) (citations and internal quotation marks
8 omitted), *superseded on other grounds by* 20 C.F.R. §§ 404.1502(a), 416.902(a).
9 This was a clear and convincing reason to discount Plaintiff’s subjective
10 complaints.

11 Plaintiff’s challenge to this reason is not persuasive. Plaintiff argues that “it
12 is a questionable practice to chastise one with a mental impairment for the exercise
13 of poor judgment in seeking rehabilitation.” (Joint Stip. at 11 (quoting *Regennitter*
14 *v. Comm’r of Soc. Sec. Admin.*, 166 F.3d 1294, 1299-1300 (9th Cir. 1999)). Here,
15 however, “there was no medical evidence that [Plaintiff’s] resistance was
16 attributable to [his] mental impairment rather than [his] own personal preference[.]”
17 *Molina*, 674 F.3d at 1114. Thus, “it was reasonable for the ALJ to conclude that
18 the level of frequency of treatment [was] inconsistent with the level of complaints.”
19 *Id.* (citation and internal quotation marks omitted). Thus, it remains the case that
20 Plaintiff’s lack of extensive mental health treatment was a clear and convincing
21 reason to discount his subjective complaints.

22 Second, the ALJ stated that Plaintiff “has not been psychiatrically
23 hospitalized.” (AR 25.) Plaintiff persuasively argues, however, that the agency
24 does not require a claimant to undergo treatment as aggressive as hospitalization in
25 order for his subjective complaints to be accepted. (Joint Stip. at 11-12.) Thus, this
26 was not a clear and convincing reason to discount Plaintiff’s subjective complaints.
27 The error was harmless, however, if the ALJ’s other grounds to reject Plaintiff’s
28 subjective complaints nonetheless remain valid. *See Carmickle v. Commissioner*,

1 *Social Sec. Admin.*, 533 F.3d 1155, 1162 (9th Cir. 2008) (ALJ’s erroneous reliance
2 on reasons for discounting a claimant’s testimony is harmless where other reasons
3 remain valid). For the reasons discussed in this decision, the ALJ’s other grounds
4 remain valid.

5 Third, the ALJ stated that “objective findings” from a “psychiatric
6 consultative examination” supported the RFC assessment. (AR 25.) During the
7 examination, Plaintiff had “normal, clear, and coherent speech”; his “affect was
8 appropriate”; he “performed well on each task, including memory recall,
9 concentration, and calculation”; and he “displayed a good fund of information, as
10 well as good insight and judgment[.]” (AR 25 (citing AR 259).) Plaintiff has not
11 challenged this reason. An ALJ may discount subjective complaints that are
12 inconsistent with findings made by an examining physician. *See Turner v.*
13 *Commissioner of Social Sec.*, 613 F.3d 1217, 1224 (9th Cir. 2010) (ALJ
14 permissibly rejected claimant’s allegations of disabling mental limitations where
15 examining psychiatrists “found him to be cooperative and pleasant”); *Morgan v.*
16 *Commissioner of Social Sec. Admin.*, 169 F.3d 595, 600 (9th Cir. 1999) (same
17 where the allegations were undermined by the reports of an examining
18 psychologist); *see also Rounds v. Commissioner Social Sec. Admin.*, 807 F.3d 996,
19 1006 (9th Cir. 2015) (“The ALJ must . . . consider factors including the
20 observations of . . . examining physicians . . . regarding . . . the claimant’s
21 symptom[s]”) (citation and internal quotation marks omitted). Under these
22 precedents, this was a clear and convincing reason to discount Plaintiff’s subjective
23 complaints.

24 In sum, the first and third types of medical evidence that the ALJ discussed,
25 referring to minimal mental health treatment and normal findings during the
26 psychiatric examination, were clear and convincing reasons to discount Plaintiff’s
27 subjective complaints.

28 ///

1 **2. work at “seasonal jobs.”**

2 The ALJ next stated that “[i]n late 2018 and also 2019 records, [Plaintiff]
3 reported working seasonal jobs.” (AR 25 (citing AR 288-89).) The jobs involved
4 two weeks of work at a jewelry store (AR 288) and a “seasonal job” (AR 299).
5 Plaintiff has not challenged this reason.

6 “An ALJ may consider any work activity, including part-time work, in
7 determining whether a claimant is disabled,” even where the work activity consists
8 of “occasional eight-hour shifts.” *Ford v. Saul*, 950 F.3d 1141, 1156 (9th Cir.
9 2020) (citing *Drouin v. Sullivan*, 966 F.2d 1255, 1258 (9th Cir. 1992)); *see also*
10 *Greger v. Barnhart*, 464 F.3d 968, 972 (9th Cir. 2006) (claimant’s ability to do
11 carpentry work undermined his complaints of disabling symptoms); *Richardson v.*
12 *Commissioner of Social Sec.*, 588 F. App’x 531, 533 (9th Cir. 2014) (claimant’s
13 “ability to work part-time after applying for benefits” supported ALJ’s adverse
14 credibility assessment). Here, the ALJ reasonably interpreted Plaintiff’s ability to
15 perform seasonal work (AR 25) as inconsistent with his allegations that he was
16 unable to perform any work due to his mental impairments and inability to sleep
17 (AR 38). Thus, this was a clear and convincing reason to discount Plaintiff’s
18 subjective complaints.

19
20 **3. “activities of daily living.”**

21 The ALJ finally stated that Plaintiff’s “activities of daily living are fully
22 consistent with the limitations provided.” (AR 26.) Specifically, the ALJ pointed
23 to Plaintiff’s testimony that he “regularly attends his AA meetings,” “grocery shops
24 for himself and his mother,” and is “his mother’s caregiver, which involves
25 cleaning, cooking and gardening for her.” (AR 25-26 (citing AR 258, 287, 288-
26 89).)

27 An ALJ may reject the subjective complaints of a claimant based on evidence
28 of the claimant’s daily activities on two grounds: the activities, as the claimant

1 describes them, contradict the claimant’s other testimony; or the activities meet the
2 threshold for transferable work skills. *Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir.
3 2007). Here, under the second ground, the ALJ appeared to find that Plaintiff’s
4 activities met the threshold for transferable work skills: the ALJ found that
5 Plaintiff’s activities “show that [he] can have occasional interaction with the
6 public” and were “consistent with the simple work-related decisions provided in the
7 residual functional capacity.” (AR 25-26.) In that circumstance, “if the claimant
8 engages in numerous daily activities involving skills that could be transferred to the
9 workplace, an adjudicator may discredit the claimant’s allegations upon making
10 specific findings relating to the claimant’s daily activities.” *Bunnell*, 947 F.2d at
11 346 (citing *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989)).

12 Here, the ALJ made these specific findings. Based on the specific activities
13 that he cited, the ALJ “was permitted to consider daily living activities in his
14 credibility analysis.” *Burch*, 400 F.3d at 681. The activities that the ALJ found in
15 this case involved Plaintiff’s ability to attend AA meetings; grocery shop for
16 himself and his mother; and act as a caregiver for his mother by cleaning, cooking,
17 and gardening. (AR 25-26.) Contrary to Plaintiff’s argument that these activities
18 were “sporadic” and not transferable to a work setting (Joint Stip. at 13), the
19 activities the ALJ cited here—particularly those involving the daily care of
20 Plaintiff’s 80-year-old mother—are similar to activities that, under Ninth Circuit
21 precedent, were permissibly found to “involv[e] skills that could be transferred to a
22 workplace.” *Burch*, 400 F.3d at 681 (claimant’s activities reasonably could be
23 found transferrable to a workplace where they consisted of caring for her own
24 personal needs, cooking, cleaning, shopping, interacting with her nephew and her
25 boyfriend, and managing her own finances and those of her nephew); *see also*
26 *Stubbs-Danielson v. Astrue*, 539 F.3d 1169, 1175 (9th Cir. 2008) (claimant’s
27 activities of cooking, house cleaning, doing laundry, and helping her husband in
28 managing finances were activities that “tend to suggest the claimant may still be

1 capable of performing the basic demands of competitive, remunerative, unskilled
2 work on a sustained basis”); *Morgan*, 169 F.3d at 600 (claimant’s “ability to fix
3 meals, do laundry, work in the yard, and occasionally care for his friend’s child
4 served as evidence of [his] ability to work”). Thus, this was a clear and convincing
5 reason to discount Plaintiff’s subjective complaints.

6
7 **D. Conclusion.**

8 The ALJ stated three types of reasons that were clear and convincing reasons
9 to discount Plaintiff’s subjective complaints, and substantial evidence in the record
10 supported the ALJ’s reasoning. Thus, reversal is not warranted.

11
12 **ORDER**

13 It is ordered that Judgment be entered affirming the decision of the
14 Commissioner of Social Security and dismissing this action with prejudice.

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16 DATED: August 3, 2022

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20 MARIA A. AUDERO
21 UNITED STATES MAGISTRATE JUDGE
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