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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOHN HELWIG,

Plaintiff,

v.

CAROLYN W. COLVIN,¹
Acting Commissioner of Social
Security,

Defendant.

) Case No. EDCV 12-2245-OP

) MEMORANDUM OPINION AND
) ORDER

The Court² now rules as follows with respect to the disputed issues listed in the Joint Stipulation (“JS”).³

¹ Carolyn W. Colvin, the current Acting Commissioner of Social Security, is hereby substituted as the Defendant herein. See Fed. R. Civ. P. 25(d)(1).

² Pursuant to 28 U.S.C. § 636(c), the parties consented to proceed before the United States Magistrate Judge in the current action. (ECF Nos. 8, 9.)

³ As the Court stated in its Case Management Order, the decision in this case is made on the basis of the pleadings, the Administrative Record, and the Joint Stipulation filed by the parties. In accordance with Rule 12(c) of the Federal Rules
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I.

DISPUTED ISSUES

As reflected in the Joint Stipulation, the disputed issues raised by Plaintiff as the grounds for reversal and/or remand are as follows:

- (1) Whether the Administrative Law Judge (“ALJ”) erred in finding that Plaintiff’s impairments did not meet a listed impairment;
- (2) Whether the ALJ properly evaluated Plaintiff’s credibility;
- (3) Whether the ALJ erred in rejecting the opinion of Plaintiff’s treating physician; and
- (4) Whether the evidence submitted to the Appeals Council would result in a different outcome.

(JS at 4.)

II.

STANDARD OF REVIEW

Under 42 U.S.C. § 405(g), this Court reviews the Commissioner’s decision to determine whether the Commissioner’s findings are supported by substantial evidence and whether the proper legal standards were applied. DeLorme v. Sullivan, 924 F.2d 841, 846 (9th Cir. 1991). Substantial evidence means “more than a mere scintilla” but less than a preponderance. Richardson v. Perales, 402 U.S. 389, 401, 91 S. Ct. 1420, 28 L. Ed. 2d 842 (1971); Desrosiers v. Sec’y of Health & Human Servs., 846 F.2d 573, 575-76 (9th Cir. 1988). Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Richardson, 402 U.S. at 401. The Court must review the record as a whole and consider adverse as well as supporting evidence. Green v. Heckler, 803 F.2d 528, 529-30 (9th Cir. 1986). Where evidence is susceptible of

³(...continued)

of Civil Procedure, the Court has determined which party is entitled to judgment under the standards set forth in 42 U.S.C. § 405(g). (ECF No. 6 at 3.)

1 more than one rational interpretation, the Commissioner’s decision must be upheld.
2 Gallant v. Heckler, 753 F.2d 1450, 1452 (9th Cir. 1984).

3 **III.**

4 **DISCUSSION**

5 **A. The ALJ’s Findings.**

6 The ALJ found that Plaintiff has the severe impairment of a mood disorder
7 with anxious and depressed features. (Administrative Record (“AR”) at 22.) The
8 ALJ found that Plaintiff had the residual functional capacity (“RFC”) to perform “a
9 full range of work at all exertional levels but with the following nonexertional
10 limitations: work limited to only a moderate degree of stress; no intrusive
11 supervision; no anxiety provoking activities; no high production quotas, and no
12 stressful contact with the public such as handling complaints.” (Id. at 24.)

13 Relying on the testimony of a vocational expert (“VE”), the ALJ concluded
14 that, although Plaintiff could not perform his past relevant work, he was capable of
15 performing jobs that exist in significant numbers in the national economy. (Id. at
16 29.)

17 **B. The ALJ Properly Determined Plaintiff’s Impairments Did Not Meet or**
18 **Equal a Listed Impairment.**

19 Plaintiff contends that the ALJ erred at step three of the sequential
20 evaluation process in concluding that Plaintiff’s mental impairment did not meet or
21 equal Listing 12.04.C. (JS at 4-6, 7-8.) More specifically, Plaintiff argues that his
22 mental impairment of depressive disorder meets Listing 12.04.C.3 because Plaintiff
23 is living in Montclair Guest Home, which Plaintiff contends is a state licensed
24 board and care facility for the mentally ill. (JS at 5.)

25 Listing 12.04.C provides in relevant part as follows:

26 12.04 *Affective Disorders*: Characterized by a disturbance of
27 mood, accompanied by a full or partial manic or depressive syndrome.

28 ...

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2 C. Medically documented history of a chronic affective disorder
3 of at least 2 years' duration that has caused more than a minimal
4 limitation of ability to do basic work activities, with symptoms or signs
5 currently attenuated by medication or psychosocial support, and one of
6 the following:

7

8 3. Current history of 1 or more years' inability to function
9 outside a highly supportive living arrangement, with an indication of
10 continued need for such an arrangement.

11 20 C.F.R. pt. 404, subpt. P, app. 1, § 12.04.C.

12 An ALJ must evaluate the relevant evidence to determine whether a
13 claimant's impairment or impairments meet or equal one of the specified
14 impairments set forth in the Listings. Lewis v. Apfel, 236 F.3d 503, 512 (9th Cir.
15 2001). A "boilerplate finding is insufficient to support a conclusion that a
16 claimant's impairment does not [meet or equal a Listing]." Id. at 512; see also,
17 e.g., Marcia v. Sullivan, 900 F.2d 172, 176 (9th Cir. 1990) (noting that the ALJ's
18 unexplicated finding at step three was reversible error). However, an ALJ is not
19 required to "state why a claimant failed to satisfy every different section of the
20 listing impairments." Gonzalez v. Sullivan, 914 F.2d 1197, 1201 (9th Cir. 1990).

21 Accordingly, a well-developed discussion of the factual basis of a claimant's
22 impairments elsewhere in a hearing decision may, under certain circumstances,
23 support an unexplained finding of no medical equivalence at step three. Id. at 1201
24 (finding an ALJ's four-page summary of the record an adequate basis for
25 unexplained statement that the applicant's impairments did not meet or equal any
26 listing). An ALJ's lack of formal analysis and findings at step three will not
27 constitute reversible error when the ALJ "discussed and evaluated evidence
28 supporting his conclusion" in a different section of his decision; and with respect to

1 equivalency, a plaintiff “offered no theory, plausible or otherwise, as to how his
2 [impairments] combined to equal a listed impairment.” Lewis, 236 F.3d at 513-14.

3 Here, Plaintiff has failed to demonstrate that his mental impairment meets or
4 equals Listing 12.04.C.3. First, Plaintiff has not demonstrated that he meets the
5 temporal requirement of Listing 12.04.C.3. At the time of the administrative
6 hearing on July 7, 2011, Plaintiff testified that he had been residing at Montclair
7 Guest Home since December 2010, approximately seven months. (AR at 48.) As
8 a result, it is unclear from the evidence whether Plaintiff lived at Montclair Guest
9 Home for an entire year. In addition, Plaintiff has not provided sufficient evidence
10 to demonstrate that Montclair Guest Home would qualify as a “highly supportive
11 living arrangement” or that he has an “inability to function outside a highly
12 supportive living arrangement,” as required by 12.04.C.3. Indeed, much of the
13 evidence is to the contrary.⁴ (Id. at 417-20.)

14 Accordingly, given the dearth of evidence regarding Plaintiff’s residence at
15 Montclair Guest Home, the ALJ did not err in determining that Plaintiff’s mood
16 disorder did not meet the requirements of Listing 12.04.C.3.

17 **C. The ALJ Properly Evaluated Plaintiff’s Credibility.**

18 Plaintiff asserts that the ALJ failed to provide clear and convincing reasons
19 for rejecting his subjective complaints. (JS at 15-19, 22.) Plaintiff testified at the
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21 ⁴ For instance, on February 4, 2011, Plaintiff was involved in a serious
22 motorcycle accident requiring multiple surgeries and physical therapy and
23 rehabilitation for the repair and healing of his open fracture of the left patella and
24 right wrist. (AR at 421-540.) As a result, it appears that he could come and go
25 from the home as he pleased. (Id. at 533.) Plaintiff also reported that he was an
26 employee of the State of California at the time of the accident, apparently cooking
27 meals and assisting residents at the Roberts’ Group Home. (Id. at 59, 544.) There
28 is no evidence as to why he was placed in the Montclair Guest Home, or the type
of treatment and support he received there. For these reasons, the Court finds that
there was no error in the ALJ’s allege failure to mention that Plaintiff was residing
in the Montclair Guest Home.

1 administrative hearing that he experienced poor memory and concentration,
2 difficulty understanding and following instructions, and social withdrawal. (AR at
3 48-57.) The ALJ found Plaintiff less than credible for the following reasons: (1)
4 medication had largely been successful in controlling Plaintiff’s symptoms; (2)
5 Plaintiff made inconsistent statements at the administrative hearing; and (3)
6 Plaintiff’s complaints of disabling limitations were not supported by the objective
7 evidence of record. (AR at 25-26.)

8 An ALJ’s assessment of pain severity and claimant credibility is entitled to
9 “great weight.” Weetman v. Sullivan, 877 F.2d 20, 22 (9th Cir. 1989); Nyman v.
10 Heckler, 779 F.2d 528, 531 (9th Cir. 1986). When, as here, an ALJ’s disbelief of a
11 claimant’s testimony is a critical factor in a decision to deny benefits, the ALJ must
12 make explicit credibility findings. Rashad v. Sullivan, 903 F.2d 1229, 1231 (9th
13 Cir. 1990); Lewin v. Schweiker, 654 F.2d 631, 635 (9th Cir. 1981); see also
14 Albalos v. Sullivan, 907 F.2d 871, 874 (9th Cir. 1990) (an implicit finding that
15 claimant was not credible is insufficient).

16 Once a claimant has presented medical evidence of an underlying
17 impairment which could reasonably be expected to cause the symptoms alleged,
18 the ALJ may only discredit the claimant’s testimony regarding subjective pain by
19 providing specific, clear, and convincing reasons for doing so. Lingenfelter v.
20 Astrue, 504 F.3d 1028, 1035–36 (9th Cir. 2007). An ALJ’s credibility finding
21 must be properly supported by the record and sufficiently specific to ensure a
22 reviewing court that the ALJ did not arbitrarily reject a claimant’s subjective
23 testimony. Bunnell v. Sullivan, 947 F.2d 341, 345-47 (9th Cir. 1991).

24 Here, the ALJ provided clear and convincing reasons for discounting
25 Plaintiff’s subjective complaints.

26 First, the ALJ noted that the medical records demonstrated that Plaintiff’s
27 prescribed psychiatric medications – Lexapro, Lamictal, and Seroquel – had “been
28 relatively effective in controlling [Plaintiff’s] symptoms.” (AR at 26.) The ALJ

1 cited medical records in which Plaintiff reported an improvement in his depression
2 and mood swings with the use of his psychiatric medications and abstinence from
3 alcohol. (Id. (citing id. at 408, 409).) An ALJ may properly rely on the fact that
4 medication is helpful to discount a claimant's credibility. Tidwell v. Apfel, 161
5 F.3d 599, 602 (9th Cir. 1998) (ALJ may properly rely upon weak objective
6 support, lack of treatment, daily activities inconsistent with total disability, and
7 helpful medication); see also Johnson v. Shalala, 60 F.3d 1428, 1432 (9th Cir.
8 1995) (ALJ may properly rely on the fact that only conservative treatment had
9 been prescribed).

10 Second, the ALJ noted that Plaintiff provided inconsistent statements during
11 the administrative hearing. (AR at 26.) When questioned by the ALJ why he
12 could not work, Plaintiff initially testified that he had lost his job because his
13 driver's license had been revoked for driving under the influence. Plaintiff further
14 testified that he would still be working if he had not lost his license. (Id. at 51.)
15 However, in response to follow up questions by his attorney, Plaintiff testified that,
16 even if his license had not been revoked, he was unsure whether he would be able
17 to perform his past work. (Id. at 55.) The ALJ may take into account
18 inconsistencies in the claimant's testimony when evaluating a claimant's
19 credibility. Thomas v. Barnhart, 278 F.3d 947, 958-59 (9th Cir. 2002).

20 Finally, the ALJ noted that the objective medical evidence in the record did
21 not support Plaintiff's claims of disabling symptoms. (Id. at 26.) Although a lack
22 of objective medical evidence may not be the sole reason for discounting a
23 plaintiff's credibility, it is nonetheless a legitimate and relevant factor to be
24 considered. Rollins v. Massanari, 261 F.3d 853, 857 (9th Cir. 2001). Thus, the
25 lack of medical evidence in the record to support Plaintiff's claims, in addition to
26 the ameliorative effect of Plaintiff's medications and his inconsistent hearing
27 testimony, provided sufficient reasons to support the ALJ's adverse credibility
28 determination.

1 **D. The ALJ Properly Considered the Opinion of Plaintiff’s Treating**
2 **Physician.**

3 Plaintiff contends that the ALJ erred by failing to accord controlling weight
4 to the opinion of Plaintiff’s treating psychiatrist, Dr. Wali. (JS at 8-11, 14-15.) In
5 an August 22, 2011, Mental Impairment Questionnaire, Dr. Wali diagnosed
6 Plaintiff with bipolar disorder, severe, without psychotic features. (AR at 413.)
7 Dr. Wali opined that Plaintiff had moderate limitations in activities of daily living,
8 and marked limitations in maintaining social functioning and maintaining
9 concentration, persistence, or pace. (Id. at 415.) Dr. Wali also opined that Plaintiff
10 would have three or more episodes of decompensation within a twelve month
11 period, each of at least two weeks duration, and that Plaintiff’s mental impairment
12 would cause him to be absent from work more than four days per month. (Id. at
13 416.)

14 It is well established in the Ninth Circuit that a treating physician’s opinion
15 is entitled to special weight, because a treating physician is employed to cure and
16 has a greater opportunity to know and observe the patient as an individual.
17 McAllister v. Sullivan, 888 F.2d 599, 602 (9th Cir. 1989). “The treating
18 physician’s opinion is not, however, necessarily conclusive as to either a physical
19 condition or the ultimate issue of disability.” Magallanes v. Bowen, 881 F.2d 747,
20 751 (9th Cir.1989). The weight given a treating physician’s opinion depends on
21 whether it is supported by sufficient medical data and is consistent with other
22 evidence in the record. 20 C.F.R. § § 404.1527(d), 416.927(d). Where the treating
23 physician’s opinion is uncontroverted by another doctor, it may be rejected only
24 for “clear and convincing” reasons. Lester v. Chater, 81 F.3d 821, 830 (9th Cir.
25 1995); Baxter v. Sullivan, 923 F.2d 1391, 1396 (9th Cir. 1991). If the treating
26 physician’s opinion is controverted, it may be rejected only if the ALJ makes
27 findings setting forth specific and legitimate reasons that are based on the
28 substantial evidence of record. Thomas, 278 F.3d at 957; Magallanes, 881 F.2d at

1 751; Winans v. Bowen, 853 F.2d 643, 647 (9th Cir. 1987). The ALJ can “meet this
2 burden by setting out a detailed and thorough summary of the facts and conflicting
3 clinical evidence, stating his interpretation thereof, and making findings.” Thomas,
4 278 F.3d at 957 (citation omitted) (quotation omitted).

5 Here, the ALJ gave several reasons for disregarding Dr. Wali’s opinion, each
6 of which is supported by substantial evidence in the record.

7 First, the ALJ noted that Plaintiff’s treatment history with Dr. Wali was
8 “quite sporadic and brief as she only sees [Plaintiff] for 30 minutes every 8
9 weeks.” (AR at 27 (citing id. at 413).) The “nature and extent” of a treating
10 physician’s relationship with a claimant may properly be taken into account when
11 determining the weight to give a treating physician’s opinion. See Orn v. Astrue,
12 495 F.3d 625, 633 (9th Cir. 2007) (citing 20 C.F.R. § 404.1527(d)(2)(i)-(ii)).

13 Second, the ALJ gave less weight to Dr. Wali’s opinion because it was not
14 supported by her treatment notes, which the ALJ noted were cursory and general.
15 (AR at 27.) The ALJ observed that Dr. Wali’s treatment notes did not contain any
16 objective findings to support her opinion that Plaintiff had extreme work-related
17 limitations. (Id.) In declining to accord Dr. Wali’s opinion controlling weight, the
18 ALJ properly relied upon the fact that Dr. Wali had failed to provide supporting
19 reasoning or clinical findings. See Molina v. Astrue, 674 F.3d 1104, 1111 (9th Cir.
20 2012) (“We have held that the ALJ may ‘permissibly reject[] . . . check-off reports
21 that [do] not contain any explanation of the bases of their conclusions.’”) (quoting
22 Crane v. Shalala, 76 F.3d 251, 253 (9th Cir. 1996)).

23 Third, the ALJ gave less weight to Dr. Wali’s opinion because it was largely
24 based upon Plaintiff’s own subjective reports of symptoms and limitations, which
25 the ALJ discounted as not being fully credible. (AR at 27.) As discussed in detail
26 above, the ALJ properly determined that Plaintiff was not fully credible with
27 respect to his symptoms and limitations. To the extent that Dr. Wali’s conclusion
28 that Plaintiff could not work due to severe mental functional limitations was based

1 upon Plaintiff's own self-reports, the ALJ properly rejected Dr. Wali's opinion.
2 "An ALJ may reject a treating physician's opinion if it is based to a large extent on
3 a claimant's self-reports that have been properly discounted as incredible."
4 Tommasetti v. Astrue, 533 F.3d 1035, 1041 (9th Cir. 2008).

5 **E. The Additional Medical Evidence Before the Appeals Council Does Not**
6 **Warrant Remand.**

7 Plaintiff argues that this case should be remanded to allow the ALJ to
8 consider the entire record, including the additional medical evidence regarding
9 Plaintiff's February 2011 motorcycle accident. (JS at 23-24, 26.) Plaintiff
10 contends that these records demonstrate that he suffered serious physical injuries
11 that limit his ability to perform work activity. (JS at 23 (citing AR at 421-560,
12 561-816, 817, 993).) The Appeals Council considered this additional evidence and
13 found it did not provide a basis for changing the ALJ's decision. (AR at 5-9.)
14 Therefore, the Appeals Council denied review. (Id. at 1.)

15 If new and material evidence is submitted after the ALJ's decision, the
16 Appeals Council shall consider such evidence "only where it relates to the period
17 on or before the date of the [ALJ] hearing decision." See 20 C.F.R. § 404.970(b).
18 The Appeals Council will overturn an ALJ's decision only when it determines,
19 after a review of the entire record, including the new and material evidence, that
20 the decision is contrary to the weight of the evidence. Id.; see also Macri v. Chater,
21 93 F.3d 540, 544 (9th Cir. 1996) (citing Bates v. Sullivan, 894 F.2d 1059, 1064
22 (9th Cir. 1990), overruled on other grounds by Bunnell v. Sullivan, 947 F.2d 341,
23 342 (9th Cir. 1991) (en banc)). Moreover, in the Ninth Circuit, where a claimant
24 has submitted additional materials to the Appeals Council in requesting review of
25 the ALJ's decision, the district court may consider the new evidence "because the
26 Appeals Council addressed them in the context of denying [the claimant's] request
27 for review." Harman v. Apfel, 211 F.3d 1172, 1180 (9th Cir. 2000) (citing
28 Ramirez v. Shalala, 8 F.3d 1449 (9th Cir. 1993)).

