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**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA**

DONALD ALAN SCHNEIDER,

Case No. 1:14-cv-00034-SKO

Plaintiff,

**ORDER ON PLAINTIFF'S COMPLAINT**

v.

(Doc. Nos. 1, 15)

CAROLYN W. COLVIN,  
Acting Commissioner of Social Security,

Defendant.

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**INTRODUCTION**

Plaintiff Donald Alan Schneider ("Plaintiff") seeks judicial review of a final decision of the Commissioner of Social Security (the "Commissioner" or "Defendant") denying his application for Disability Insurance Benefits ("DIB") benefits pursuant to Title II of the Social Security Act. 42 U.S.C. § 405(g). The matter is currently before the Court on the parties' briefs, which were submitted, without oral argument, to the Honorable Sheila K. Oberto, United States Magistrate Judge.<sup>1</sup>

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<sup>1</sup> The parties consented to the jurisdiction of a U.S. Magistrate Judge. (Docs. 8, 10.)

## FACTUAL BACKGROUND

Plaintiff filed an application for DIB on August 31, 2007, alleging disability beginning on August 31, 2007, due to Dysthymic Disorder, Posttraumatic Stress Disorder ("PTSD"), Personality Disorder, substance abuse, in remission, a pain disorder, left shoulder cuff impingement, and chronic neck and shoulder pain. Plaintiff has a 12th grade education and served on activity duty in the United States Marines from 1978 until 1984 when he was honorably discharged. (AR 574, 1182.) Plaintiff worked as a mail clerk for the Internal Revenue Service ("IRS") from 1991 to 2007, when he resigned due to what Plaintiff described as a hostile work environment and a director Plaintiff did not like. (AR 156, 587.)

### A. Relevant Medical Background

Clinical psychiatrist A. A. Howsepien, M.D., Ph.D., began treating Plaintiff at the Veterans Administration Central California Health, Mental Health Clinic ("VA") in 2003. (AR 579, 812.) Plaintiff saw multiple medical professionals at the VA facility, the reports of whom are contained in his health summary records from the VA.

On August 29, 2007, Thomas J. O'Rourke, an addiction therapist at VA, noted Plaintiff was easily stressed, slow at tasks, and did not sleep well. (AR 245.) O'Rourke indicated Plaintiff was depressed, angry, irritable, explosive, dysphoric, anxious, and feeling hopeless. (AR 245.) Plaintiff indicated he and his wife were about to lose their home, and his wife was angry with him. (AR245.) Although O'Rourke and Plaintiff discussed multiple possible options for employment, O'Rourke noted Plaintiff was not suitable for any of them. (AR 245.)

On September 11, 2007, Dr. Howsepien drafted a letter to the Civil Service Retirement System ("CSRS") regarding Plaintiff's condition. (AR 244.)

[Plaintiff] has been under my outpatient psychiatric care at the [VA] since 7 July 2003. He is being treated with both psychotherapy and pharmacotherapy for depression and anxiety whose primary source has been employment (Internal Revenue Service) related stressors. His current primary diagnoses are Dysthymic Disorder (with significant adjustment overlay), Anxiety Disorder NOS, Learning Disorder NOS, Pain Disorder, and Obstructive Sleep Apnea. He also has a history of Cannabis and Alcohol Dependence that have been in Full Sustained Remission. His current psychiatric medications include mirtazapine 7.5 mgs at bedtime,

1 hydroxyzine 25 mgs at bedtime, venlafaxine SA 375 mgs every morning, buspirone  
2 20 mgs tid, and modafanil 400 mgs every morning.

3 [Plaintiff's] psychiatric condition has worsened appreciably over the past 4 years, in  
4 spite of intensified efforts to treat him. He has attempted, on multiple occasions,  
5 unsuccessfully, to return to work. He is exquisitely sensitive to stress, exhibiting  
6 both somatic symptoms (tachycardia and hypertension) and myriad psychiatric  
7 symptoms in the face of occupational stressors (perceived repeated harassment  
8 resulting in a hostile work environment). [Plaintiff's] symptoms include the  
9 following: depression, anxiety, dysphoria, hopelessness, helplessness, anger,  
10 irritability, explosivity (with episodes of violent behavioral dyscontrol),  
11 psychomotor retardation, frustration, tearfulness, pessimism, fatigue, sleep  
12 disturbance, multiple pain complaints, numbness of left hand, and marital discord.  
13 On multiple occasions he has lost control of himself and has violently broken  
14 multiple items in his home.

15 The protracted exacerbation of [Plaintiff's] anxiety and depressive disorders are, in  
16 my professional opinion, clearly causally linked to stresses at the IRS caused by  
17 repeated instances of harassment resulting in a perceived hostile work environment  
18 . . . .

19 (AR 244.)

20 In January 2008, Plaintiff was seen by Steven C. Swanson, Ph.D., for a consultative  
21 psychiatric examination. (AR 387-93.) Dr. Swanson opined Plaintiff was

22 able to maintain concentration or relate appropriate to others in a work setting. He  
23 would be able to handle funds in his own best interests. He is expected to  
24 understand, carry out, and remember simple instructions. He is judged as able to  
25 respond appropriately to usual work situations, such as attendance, safety, and the  
26 like. Changes in routine would not be very problematic for him. There do not  
27 appear to be substantial restrictions in daily activities.

28 (AR 393.) J. Levinson, Ph.D., also reviewed Plaintiff's records in January 2008 and determined  
that Plaintiff's mental conditions caused him only mild limitation in the area of social functioning  
and in maintaining concentration, persistence, or pace. (AR 405.) He opined Plaintiff's mental  
status appeared to have normalized after he resigned from his position at the IRS. (AR 407.)  
Although Plaintiff continued to have some financial stressors, Dr. Levinson opined that Plaintiff  
did not have any evident functional limitations and his mental condition was "non-severe."  
(AR 407.)

On February 11, 2008, Dr. Howsepian noted Plaintiff had resumed "going to Temple," and  
wanted to rebuild his relationship with God. (AR 801.) Plaintiff was angry that no one from the

1 Temple had called him to "see how he was doing." (AR 801.) He noted he was appealing his  
2 social security claim, and he talked with Dr. Howsepian about "possible PTSD," trauma of  
3 bombing in Lebanon, that his wife had lost her job, and that he had interviews that day and the  
4 next. (AR 801.) Plaintiff complained that he had no friends and he was not able to make them; he  
5 "entertained the idea that, perhaps, he himself is a barrier to this." (AR 801.) He had had surgery,  
6 he was no longer using a continuous positive airway pressure ("CPAP") machine, was sleeping  
7 well, and his facial appearance was "different." (AR 801.) Overall, Dr. Howsepian reported  
8 Plaintiff to be "resigned, somewhat depressed[,] less angry, irritable, and anxious." (AR 801.)

9       On April 10, 2008, Plaintiff started mood disorder group therapy, which was led by Jack  
10 H. Papzian, Ph.D. (AR 779.) On April 29, 2008, Plaintiff was noted by Dr. Howsepian to be  
11 "distraught, frustrated, tired. No SI." (AR 769.) On June 9, 2008, Dr. Howsepian noted Plaintiff's  
12 mother had died, and he had arrived at her hospital too late to see her before she passed away  
13 which was very upsetting to Plaintiff. (AR 749.) Dr. Howsepian reiterated his "firm professional  
14 opinion" that Plaintiff could not return to work at the IRS. (AR 749.) Plaintiff noted an opening  
15 at VA in refrigeration maintenance, but he had no experience or skill in this area. (AR 749.)  
16 Plaintiff reported he had no income coming in, and he was at risk of losing his home. (AR 749.)  
17 Dr. Howsepian noted Plaintiff was tearful when talking about his mother's death, and he was  
18 frustrated and angry about his work and financial situation. (AR 749.) Dr. Howsepian noted a  
19 dysphoric restricted affect, and that Plaintiff appeared to have lost some weight. (AR 749.) He  
20 diagnosed Plaintiff with dysthymic disorder, PTSD, adjustment disorder with anxiety and  
21 depression, and a pain disorder. (AR 749.)

22       On June 10, 2008, Dr. Howsepian drafted another letter to the Disability, Reconsideration  
23 and Appeals Group of the United States Office of Personnel Management ("OPM") in response an  
24 April 2008 letter from OPM indicating Plaintiff was not disabled within the meaning of retirement  
25 law. (AR 745.) Dr. Howsepian's letter, in relevant part, explained that

26  
27       [Plaintiff's] symptoms of depression, anxiety, irritability, dysphoria, explosivity  
28       (including behavior dyscontrol resulting in his overturning furniture and breaking  
      things), his shutting down emotionally, his exquisite sensitivity to stress, his

1 substantial elevation in his blood pressure (up to 180/100) as a result of stress and  
2 anxiety, and his having days when he scarcely gets out of bed certainly qualifies as  
3 a disabling, serious psychiatric disturbance with significant deterioration from a  
4 prior level of functioning that can clearly causally be traced to stressors at the IRS .  
5 . . . I have written MULTIPLE letters to the IRS stating that, due to profound  
6 psychiatric reactions to stress in that context, Mr. Schneider is wholly and  
7 completely disabled from employment at that institution and, therefore, that he  
8 should be provided medical leave (which he has been provided, with multiple  
9 extensions) . . . .

10 (AR 746.)

11 On July 29, 2008, Plaintiff again saw Dr. Howsepian who noted that Plaintiff was  
12 "profoundly dysphoric, tearful, on the verge of decompensating." (AR 727.) Dr. Howsepian  
13 reported that there was no "movement in any direction in his situation, except that he is now  
14 wholly out of money and on the verge of losing his home." Plaintiff reported his wife was out of  
15 work due to sciatica. Dr. Howsepian found Plaintiff to be "profoundly frustrated and hopeless,  
16 angry to the point of being rageful," and at significant risk for further decompensation. (AR 727.)

17 On August 19, 2008, Plaintiff again saw Dr. Howsepian who noted that Plaintiff remained  
18 dysphoric, pessimistic, and saw no way out. (AR 722.) Plaintiff reported that he would lose his  
19 house, and his wife's situation had not improved. (AR 722.) Dr. Howsepian reported Plaintiff  
20 appeared angry, dysphoric, and pessimistic; Plaintiff denied any suicidal or homicidal ideation;  
21 and, although, there was no disorganization in thought, there were long periods of silence.  
22 (AR 722.) Plaintiff was noted to be upset, tearful, and felt no one cared about him. (AR 722.)

23 On September 29, 2008, Plaintiff was noted by Dr. Howsepian to be dysphoric, upset  
24 about his situation, and became especially angry when any discussion of his returning to work was  
25 broached, "claiming that he would be fired after he call[ed] in sick, [and he was] unable to work."  
26 (AR 714.) Plaintiff continued to hold out hope for disability, but the relationship with his wife  
27 remained strained. (AR 714.) Plaintiff reported he had missed his mortgage payment that month  
28 and believed he would lose his home. (AR 714.) Dr. Howsepian reported Plaintiff was  
"[d]ysphoric, angry, upset, depressed, hopeless, helpless. Repeatedly states that no one is helping  
him, veterans, that he has no options, that he is f\*\*\*ed no matter what he does." (AR 714.)

On October 27, 2008, Plaintiff attended his group therapy session and appeared sad and  
resigned about his pending and apparent separation and divorce from his spouse. (AR 706.)

1 Plaintiff was staying with a friend, and he interacted with his peers after the group. Plaintiff  
2 reported that he was in a deep depression about losing his home, and his attorney had informed  
3 him the statute of limitations had expired on his discrimination claim against the IRS. (AR 706.)  
4 Plaintiff was able to tolerate feedback from his peers "and responded in kind." (AR 706.)  
5 Plaintiff was reasonable and responsive with the group as well as appropriate and cooperative with  
6 the staff. (AR 707.)

7 On December 15, 2008, Plaintiff was again seen by Dr. Howsepian who noted that  
8 Plaintiff was relatively stable despite multiple stressors. (AR 684.) Plaintiff was in the process of  
9 divorcing his wife, his wife was taking the dogs that he loves, and Plaintiff was living with a  
10 gentleman in a senior living community and if anyone found out Plaintiff would be displaced.  
11 (AR 684.) Dr. Howsepian noted Plaintiff had no disorganization, and was "[l]ess angry,  
12 depressed, and on edge than I have seen him in quite a while." (AR 684.)

13 On January 21, 2009, Plaintiff reported living with a friend who was not charging him any  
14 rent, and in return Plaintiff was helping his friend in various ways. (AR 677.) Plaintiff reported  
15 going to AA meetings and "CD aftercare" at the VA. (AR 677.) Plaintiff had surgery scheduled  
16 for his shoulder; he was worried he might be displaced from his friend's house, and repeatedly  
17 asked why someone "does not have the courage to put him on disability." (AR 677.) Plaintiff  
18 expressed that he was willing to do what he needed to do to either "get back to work or show that  
19 he cannot." (AR 677.) Dr. Howsepian noted Plaintiff presented as angry, frustrated, and  
20 depressed. (AR 677.) Plaintiff showed no aggression towards his wife, had no disorganization of  
21 thought, and maintained fair eye contact. (AR 677.)

22 On February 2, 2009, Plaintiff participated in group therapy. (AR 675.) The therapy note  
23 indicates Plaintiff had to leave his current living situation with his friend, and he was now living  
24 with his younger brother who had addiction issues. (AR 675.) Plaintiff indicated he was having  
25 to sleep "in a roach-infested environ[ment]." (AR 675.)

26 On February 6, 2009, an orthopedic outpatient surgery note indicated that in discussing his  
27 shoulder surgery, Plaintiff became agitated and accusatory and stated he was forced to have the  
28 shoulder surgery because otherwise social security would "cut [him] off" for refusing. (AR 672.)

1 His physician, Dr. Kwock, indicated he would perform the surgery, but Plaintiff did not "seem to  
2 be receptive, [and his] rather hostile demeanor continued." (AR 672.) Plaintiff's conversation  
3 with Dr. Kwock appeared to escalate and Plaintiff left the room "stating this is only a waste of his  
4 time." (AR 672.) It was noted that the consultation would not be rescheduled for the elective  
5 surgery, and that Plaintiff "would likely benefit from social work consult for housing/financial  
6 assistance during this time." (AR 672.)

7 Plaintiff was seen by therapist O'Rourke on February 23, 2009, who noted Plaintiff was  
8 angry about not having a bed in the VA homeless program and stated he was "going to have to go  
9 do something to get some help around here." (AR 656.) Upon exiting, Plaintiff slammed the  
10 door, walked away, and would not respond to several phone calls from O'Rourke. (AR 656.)  
11 When O'Rourke reached Plaintiff over the telephone, Plaintiff stated that he was going to drink  
12 some alcohol and that this "possibly would help him to get a bed in some way. He used  
13 obscenities and stated that staff did not care." (AR 656.) He was counseled to come to group  
14 therapy and discuss his concerns, but Plaintiff "expressed zero interest in this plan," and he hung  
15 up on O'Rourke. (AR 656.)

16 On February 24, 2009, Plaintiff visited the Healthcare for Homeless Veterans Program  
17 ("HCHV") office seeking placement in a program bed. (AR 654.) The social worker noted he  
18 was angry he had not been placed in a bed upon his demand. (AR 654.) Plaintiff implied that if  
19 was not placed in a program bed he might hurt himself or "go out and drink," but he specifically  
20 denied any suicidal or homicidal intentions when asked directly. (AR 654.) Plaintiff was  
21 described by the social worker as non-compliant with appointments, manipulative, and verbally  
22 aggressive when his demands were not satisfied. (AR 655.) Later in the afternoon, Plaintiff  
23 returned to the HCHV office on a walk-in basis and presented as "angry and verbally confrontive  
24 to the volunteer who was sitting at the desk, because [the] worker did not see him when he  
25 arrived." (AR 655.) Plaintiff was advised that he would be seen, but he would have to wait;  
26 before the worker could "get to him[, Plaintiff] threw his telephone cards and the referral  
27 information at the volunteer and stomped out the door, slamming it as he exited." (AR 655.)  
28

1 On March 3, 2009, Plaintiff left a phone message for O'Rourke apologizing for his  
2 behavior on February 23. (AR 652.) Plaintiff stated he had been under stress and had gone to be  
3 with his sister for a week. (AR 652.) He had returned to Fresno and had obtained housing with  
4 someone he did not care to discuss. (AR 652.)

5 On March 4, 2009, Plaintiff returned to the HCHV program office to again inquire about  
6 possible housing. (AR 651.) He was described as much more reasonable during this interview.  
7 (AR 651.) He explained that he had been in counseling for anger in the past and he admitted he  
8 did not listen well and was not open to what was being taught. (AR 651.) He also reported he had  
9 been living in a van that he owns, and his only income was from VA disability. (AR 651-52.) He  
10 was counseled to return in one week for case management. (AR 652.)

11 On March 11, 2009, Plaintiff saw Dr. Howsepian again who noted that Plaintiff was now  
12 in a VA homeless program, living on the west side of Fresno where he had his own room, but that  
13 Plaintiff thought he might be assigned a roommate. (AR 648.) Plaintiff was noted to be compliant  
14 with his medication, and asked for more pharmacological help with his depression which,  
15 "although improved, is not at baseline." (AR 648.) Dr. Howsepian noted Plaintiff was dysphoric,  
16 angry, frustrated, and depressed but was "clearly significantly improved." (AR 648.)

17 On April 30, 2009, Plaintiff went to the HCHV office to discuss a dispute he had with his  
18 apartment manager. (AR 632.) He reported he and the manager argued and the argument  
19 escalated until both came to the HCHV office to discuss the issue. (AR 632.) The social worker's  
20 note states that by the time Plaintiff got to the HCHV office, "he was in control of his temper,  
21 recognized he was incorrect and acknowledged his wrong doing." (AR 632.)

22 On June 15, 2009, Dr. Howsepian reported Plaintiff was living at the VA homeless  
23 housing unit and was comfortable there. (AR 618.) Plaintiff reported he would like a job with the  
24 post office or VA. (AR 618.) Plaintiff noted his divorce was now final. (AR 618.) Dr.  
25 Howsepian indicated Plaintiff was "[c]almer than I have seen him, and at times shows flashes of a  
26 brighter mood." (AR 618.) Plaintiff was prescribed a trial of clonazepam and was encouraged to  
27 continue with vocational rehabilitation. (AR 618.)  
28



1 On June 20, 2009, Plaintiff reported to Anne W. Walker ("Walker"), a clinical social  
2 worker at VA. (AR 563.) Walker noted Plaintiff was asked about his depression and anxiety, but  
3 denied any significant disturbances. (AR 563.) It was noted that Plaintiff was "slightly paranoid  
4 most of the time, but he was not delusional." (AR 563.) He appeared alert, clean, appropriately  
5 dressed, but his insight appeared superficial and his judgment was impaired.

6 On June 22, 2009, Plaintiff again saw Walker for HCHV case management. (AR 616.)  
7 Walker observed that Plaintiff "remained irritable, annoyed, and complaining. He is still angry,  
8 frustrated, had clear speech, and moderate eye contact." (AR 616.) His mood remained irritable  
9 and he was focused on obtaining benefits and did "not see the impact of his presentation and  
10 personality." (AR 617.) Walker considered Plaintiff's judgment flawed and self-centered, and his  
11 insight remained limited. (AR 617.)

12 On July 14, 2009, Plaintiff was seen by Trevor D. Glenn, M.D., for a VA compensation  
13 examination. (AR 574-95.) After a comprehensive review of Plaintiff's records and a mental  
14 status examination, Dr. Glenn noted the following:

15 There is impairment in his thought processes and communication in terms of  
16 concentration, focus, effort. He does not have delusions or hallucinations. Eye  
17 contact with him is good in the interview and there is no inappropriate behavior.  
18 He tears up initially when talking about the bombing in Lebanon and does the same  
19 when we get to Oklahoma City and the World Trade center event. He does not  
20 give any history of suicidal or homicidal thoughts, although he gives a history of  
21 getting very angry with politicians who did not go in and "finish the job[.]" He was  
22 able to maintain minimal personal hygiene. He dresses and bathes. He is in some  
23 disarray this morning. He cooks for the group at the homeless center one out of  
24 every eight times. He is oriented to time, place and person. He shows some  
25 complaint of short-term memory loss, but his short-term memory loss evaluates  
26 adequately. He does not give any history of compulsive checking or ritualistic  
27 behavior. His rate and flow of his speech is at times over-productive and at other  
28 times is under-productive. At times of reflection he gets quite silent and is  
preoccupied in his thinking at that time. He does not give a history of panic  
attacks. He does give a history of depression and depressed mood. He also gives a  
history of impaired impulse control with anger control problems about once a week  
yelling. He does not have a sleep impairment associated with nightmares or  
dreams. He does have it related to the sleep apnea disorder and/or turning behavior  
with sore shoulders and so forth that bring forth difficulty sleeping.

...

1 Integrated summary and conclusions show that this is a 50-year-old divorced  
2 Caucasian male who shows a moderate impairment and reduced reliability and  
3 productivity due to his major depressive disorder, which is moderate at this time.  
4 This decrease in psychosocial functioning status and quality of life has been at that  
5 level of intensity since 1995 when he first came to the VA for treatment of his  
6 psychological condition

7 . . .

8 The effects of major depression on his occupational and social functioning show  
9 there is reduced reliability and productivity as described previously.

10 (AR 592-95.) Dr. Glenn diagnosed Plaintiff with major depression, recurrent and chronic in  
11 nature, but "moderate in degree." (AR 594.) Dr. Glenn assigned a Global Assessment of  
12 Functioning ("GAF") score of 55 which he reported was indicative of "moderate impairment."  
13 (AR 594.)<sup>2</sup>

14 On July 31, 2009, Plaintiff again saw Walker in conjunction with his housing. She  
15 described Plaintiff as exhibiting a degree of paranoia and a "significant attitude of entitlement."  
16 (AR 857.) Walker considered his insight to be minimal with limited judgment. (AR 867.)  
17 Walker considered him argumentative and easily offended. (AR 867.)

18 On September 22, 2009, Plaintiff appeared at the HCHV office. (AR 834.) Walker noted  
19 Plaintiff had been edgy and irritable due to several problems including divorce, illness, lack of  
20 housing, and problems with his social security application. He and his roommate had a quarrel the  
21 prior week and before returning from a weekend pass, Plaintiff called his housing manager to warn  
22 him that he would not tolerate problems with his house roommate. (AR 834.) The housing  
23 manager stated he perceived the statement as a threat to Plaintiff's roommate and moved the  
24 roommate to another bedroom. (AR 834.) Plaintiff was advised to go to the HCHV office to  
25 discuss his statements to the housing manager. (AR 834.) When he arrived at the HCHV office,

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26 <sup>2</sup> The GAF scale is a tool for "reporting the clinician's judgment of the individual's overall level of functioning." Am.  
27 Psychiatric Ass'n, *Diagnosis & Statistical Manual of Mental Disorders* 32 (4th ed. 2000). The clinician uses a scale of  
28 zero to 100 to consider "psychological, social, and occupational functioning on a hypothetical continuum of mental  
health- illness," not including impairments in functioning due to physical or environmental limitations. *Id.* at 34. A  
GAF score between 51 and 60 indicates moderate symptoms or moderate difficulty in social, occupational, or school  
functioning. *Id.*

1 Walker reported Plaintiff sat with his arms crossed during their meeting, held a ridged posture,  
2 maintained very poor eye contact, tolerated no discussion about issues, and was not open to any  
3 feedback. (AR 834.) Because of Plaintiff's presentation, Walker initiated a call to Dr. Howsepian  
4 to assess Plaintiff for stability and medication issues. (AR 835.) While Walker noted Plaintiff  
5 was not delusional during his time at her office, he was "emotionally unreachable, angry,  
6 resentful, withdrawn, [and] non participatory in conversation." (AR 835.)

7 On September 22, 2009, Plaintiff followed-up with Dr. Howsepian who noted that he had  
8 received a communication from Walker. (AR 833.) She indicated to Dr. Howsepian that Plaintiff  
9 had access to a gun and that he had made reference to the fact that he might harm his roommate.  
10 (AR 833.) Walker described Plaintiff as angry and not coping well. (AR 833.) Plaintiff was  
11 given an extension of his housing at the homeless program because of his "precarious emotional  
12 condition." (AR 833.) Dr. Howsepian noted Plaintiff was quiet, depressed, irritable, and angry.  
13 (AR 833.)

14 In October 2009, Dr. Howsepian completed a source statement regarding Plaintiff's mental  
15 health condition and limitations. (AR 812-15.) He opined Plaintiff had no ability to relate to co-  
16 workers, the public, supervisors, or any ability to deal with work stress. (AR 813.) Dr.  
17 Howsepian opined that Plaintiff's

18 intense anger, cognitive distortions, explosivity & emotional instability result in his  
19 reacting to perceived injustices & slights in a manner that is incompatible with  
20 gainful employment. The degree & extent of his interpersonal conflicts are  
21 incompatible with the adequate functioning of the systems in which he is placed.  
22 His anger & irritability impair his judgment & disturb his attention. He is  
exquisitely vulnerable to stress. Finally, when substantially stressed & confronted  
by those in authority, he is prone to become violent.

23 (AR 813.) Dr. Howsepian went on to explain that, "[e]ven if given a task that isolates him from  
24 others, [Plaintiff's] perception of work rules, the system in which he is placed, [and] the work  
25 arrangements of others that might differ from his are subject to intense scrutiny [and] if/when  
26 problems are found, he is liable to react strongly." (AR 814.)

27 On November 2, 2009, Plaintiff saw Dr. Howsepian who noted that Plaintiff was  
28 "dramatically improved." (AR 1747.) Dr. Howsepian reported this was likely due to multiple

1 factors including his prescription for Abilify, upcoming resolution of his social security issues and  
2 where he will be living, and that he was receiving additional money for recruiting veterans to live  
3 in his section 8 apartment complex. (AR 1747.)

4 On November 3, 2009, Plaintiff met with licensed clinical social worker Nikki Garner to  
5 establish case management in the HUD-VAS program. (AR 1746.) Plaintiff received a voucher  
6 toward housing, and it was noted he had moved into an apartment on October 7, 2009.  
7 (AR 1746.) Plaintiff was reported as having a normal tone of voice, congruent thought processes,  
8 and he denied feelings of tension and anxiety. (AR 1746.) Plaintiff was optimistic about his  
9 future and had appropriate long term life goals. (AR 1746.)

10 On December 18, 2009, Plaintiff again saw his social worker regarding his participation in  
11 the HUD-VAS program. (AR 1741.) Plaintiff reported he had no issues with his current  
12 apartment, he was socializing with other veterans in his community, and he had no feelings of  
13 depression. (AR 1741-42.) On January 19, 2010, a social worker from the HUD-VAS program  
14 entered a note that Plaintiff had no issues with his housing, and he was socializing with other  
15 veterans. (AR 1738.)

16 On February 8, 2010, Plaintiff saw Dr. Howsepian who reported Plaintiff had been denied  
17 social security disability, but Plaintiff planned to appeal. He was pooling resources for food with  
18 a friend who lives in his complex, and Plaintiff stated it was good to have a friend. (AR 1733.)  
19 Dr. Howsepian noted Plaintiff remained depressed, but smiled more than he had yet seen. He was  
20 neat and clean in appearance. (AR 1733.)

21 On April 19, 2010, Plaintiff reported to Dr. Howsepian that he was frustrated by the social  
22 security judge who decided his case. (AR 1721.) Apparently the judge had determined that  
23 Plaintiff had smoked marijuana despite that Plaintiff had a long history of abstinence. (AR 1721.)  
24 Dr. Howsepian noted Plaintiff was subdued, a-motivated, but he maintained good eye contact.  
25 (AR 1721.)

26 In June 2010, Plaintiff received a prescription for medical marijuana, which he reported  
27 helped him with his pain. (AR 1310, 1679, 1699.) On June 28, 2010, Plaintiff reported having  
28 shoulder surgery and was experiencing pain as a result. (AR 1679.)

1 In September 2010, Plaintiff's social worker at the HUD-VAS housing program noted  
2 Plaintiff forgot that he had a scheduled visit with a social worker. (AR 1652.) The social worker  
3 reported that other HUD-VAS housing veterans expressed concern about Plaintiff's mental health,  
4 depression, substance use, and possible suicidal ideations. (AR 1652.) Plaintiff denied any  
5 substance abuse and stated he was taking his pain medication. (AR 1652.) Plaintiff appeared to  
6 be functioning well in his apartment and was able to meet his personal needs at that time.  
7 (AR 1652.) Plaintiff was noted to be fairly guarded about his mental health issues, but that he had  
8 support of other veterans in his complex. (AR 1653.) At a November 2010 medical appointment,  
9 Plaintiff's primary care physician at VA noted that Plaintiff was smoking but trying to quit,  
10 smoked marijuana for pain, and drank socially. (AR 1629.)

11 In December 2010, a social worker from the HUD-VAS housing program contacted  
12 Plaintiff and asked him to come to the housing office to discuss his case management. (AR 1607.)  
13 The social worker was noted to have made the request because of Plaintiff's aggressive actions  
14 toward another veteran at the apartment complex. (AR 1607.) Plaintiff was "extremely angry" at  
15 being required to come to the housing office because the social worker was not going to Plaintiff's  
16 home as originally planned. (AR 1607.) Plaintiff came to the housing office and met with a social  
17 worker and the apartment manager to discuss the situation that had occurred at the apartment.  
18 (AR 1607.) Plaintiff apologized for his behavior toward the social worker, and he was calm at the  
19 end of the meeting. (AR 1607.) Plaintiff's behavior was described as intense. (AR 1607.)

20 In January 2011, a social worker met with Plaintiff at his apartment in relation to his  
21 participation in the HUD-VAS housing program. (AR 1597.) Plaintiff stated that he enjoyed  
22 helping others, and often loaned his vehicle to friends when they had emergencies. (AR 1597.)  
23 Plaintiff stated he was depressed during the Christmas holiday, and he struggled with depression.  
24 (AR 1597.) He reported that when he was depressed, he called friends from his counseling group.  
25 (AR 1597.) The social worker reported Plaintiff was clean, appropriately dressed, engaged in  
26 conversation, and gave good eye contact. (AR 1597.)

27 In May 2011, Plaintiff saw Dr. Howsepien who reported Plaintiff called and "came in in  
28 crisis." (AR 1524.) Images of the Oklahoma City Bombing and the Twin Towers were very

1 disturbing to him emotionally, he had been depressed, irritable, and on edge. (AR 1524.) Dr.  
2 Howsepian described Plaintiff as tearful, overwhelmed emotionally, depressed, on edge.  
3 (AR 1524.) Physically, Plaintiff was noted to be sweating and his hair was matted; he appeared  
4 somewhat dazed. (AR 1524.)

5 In September 2011, at an appointment with Dr. Howsepian, Plaintiff was reported to be  
6 "doing better than [Dr. Howsepian had] yet seen him." (AR 1485.) Plaintiff described meeting a  
7 woman who was also in one of his recovery groups. (AR 1485.) Plaintiff was noted to be bright  
8 and smiling, he had lost weight, had more color in his skin, more mobile facial expressions, and  
9 better eye contact. (AR 1485.) His treatment plan included continued supportive psychotherapy  
10 and to continue the currently prescribed medication. (AR 1485.)

11 In December 2011, Plaintiff report to Dr. Howsepian that he had spent Thanksgiving with  
12 a friend and was trying to integrate into the family. (AR 1462.) Dr. Howsepian noted Plaintiff  
13 was tearful, thinner, depressed, but maintained fair eye contact and appeared neat and clean.  
14 (AR 1464.)

15 In June 2012, Plaintiff reported socializing with his neighbors (AR 1310) and in July 2012  
16 he stated he tried to go out with friends when he had the money to do so (AR 1300-01). In August  
17 2012, an HUD-VAS social worker, Clara Pellizzari ("Pellizzari"), indicated Plaintiff had come to  
18 the office very upset about a rent increase. (AR 1278-79.) At the office, Plaintiff had become  
19 "extremely angry," and pounded his fist on a desk. (AR 1279.) "[Plaintiff] became very angry  
20 and picked up two coke containers which he and the other Veteran had left[,] squeezed them  
21 together forcing ice and coke to go all over the office. He stormed to the door leading out of the  
22 office and kicked it so hard it flew open causing staff from the MST group to come out."  
23 (AR 1279.) When he drove away from the HUD-VAS office, he cussed and "flipped [another  
24 social worker] off." (AR 1279.)

25 Dr. Howsepian reviewed Pellizzari's note in the file, and Plaintiff called Dr. Howsepian to  
26 convey his "narrative side" of the story. (AR 1277.) Dr. Howsepian entered a note that Plaintiff  
27 "clearly fears being displaced from his residence due to profound financial constraints and  
28 becoming homeless, feels unfairly treated by having his rent increased almost 100% without any

1 commensurate increase in his income, fears his emotional and physical reactions to interpersonal  
2 contacts that he perceives as not helpful to him in his current plight, and possibly fears dying as a  
3 result of changes in his psychosocial situation." (AR 1277.)

4 In August 2012, Dr. Howsepian drafted a letter in support of Plaintiff's social security  
5 disability claim. Dr. Howsepian described the traumatic military events that underlie, in his  
6 opinion, Plaintiff's difficulty. Dr. Howsepian stated that

7 [Plaintiff] uses significant effort to avoid thoughts, feelings, conversations, and  
8 activities associated with this traumatic event, has a restricted range of affect, feels  
9 estranged from others, and reports a markedly diminished interest in or  
10 participation in significant activities. His hyperarousal symptoms include problems  
11 falling and staying asleep, irritability and outbursts of anger (at times resulting in  
12 physical confrontation), and difficulty concentrating. These symptoms clearly  
impaired his functioning, including his marriage that ended in divorce, and his  
ability to hold a job. His condition is chronic and results in his being wholly,  
completely, and permanently disabled from gainful employment.

13 (AR 1281-82.)

14 On September 11, 2012, Dr. Howsepian talked with Pellizzari about Plaintiff's conduct at  
15 the HUD-VAS office in August. Pellizzari indicated she had been working with Plaintiff for  
16 approximately 2 years, and told Dr. Howsepian multiple times that she "fears [Plaintiff] will be  
17 aggressive again, and that he appears to have gotten worse since being diagnosed with PTSD,  
18 waving an envelope at her, announcing his diagnosis in a manner that appears to sanction his  
19 hostile response toward her." (AR 1274.)

20 On October 29, 2012, Dr. Howsepian noted that Plaintiff "is significantly improved."  
21 (AR 1261.) The rent increase in the HUD-VAS program had been "partially reversed," and  
22 Plaintiff was finally paid money he was owed in 2010 for his shoulder. (AR 1261.) Plaintiff had  
23 purchased a bicycle and had fixed his truck. (AR 1261.) Plaintiff planned to go to San Diego to  
24 visit the zoo with his neighbor who Plaintiff considered his "adopted son." (AR 1261.) Plaintiff  
25 was "[b]righter, lighter emotionally," and he appeared "more hopeful" and "more optimistic."  
26 (AR 1261.)

27 On November 7, 2012, a HUD-VAS social worker noted he had visited Plaintiff's  
28 apartment and Plaintiff had apologized for his behavior in Pellizzari's office in August 2012.

1 (AR 1261.) He informed the social worker things were going well for him, and he was still  
2 working on his social security appeal so he would have more money. (AR 1261.) Plaintiff stated  
3 that he was not able to work because of a variety of physical and mental disorders, but was overall  
4 content with life. Plaintiff said he helps his neighbors whenever possible, and they have been  
5 helping him. (AR 1261.)

6 On November 27, 2012, a HUD-VAS social worker received a call from Plaintiff asking  
7 the social worker to speak with Plaintiff and his apartment manager about whether or not Plaintiff  
8 owed rent. (AR 1250.) The social worker and Plaintiff met with the apartment manager who  
9 explained that Plaintiff had a credit towards his rent, and he reassured Plaintiff that he had no  
10 plans to evict Plaintiff from his apartment. (AR 1250.) The social worker noted that "[d]uring all  
11 of the conversation, the veteran stayed calm and interacted appropriately with the apartment  
12 manager." Plaintiff gave credit to the group he is attending on Fridays and to the work he is doing  
13 with his psychiatrist, Dr. Howsepian. (AR 1250.)

#### 14 **B. Administrative Proceeding Background**

15 Plaintiff's application was denied initially and on reconsideration. Plaintiff requested a  
16 hearing before an administrative law judge ("ALJ") which was held on November 17, 2009. (AR  
17 27-65.) On January 10, 2010, the ALJ issued a decision finding Plaintiff not disabled. (AR 15-  
18 22.) Plaintiff sought review of that decision before the Appeals Council, which was denied, and  
19 Plaintiff sought judicial review. The district court remanded for further administrative  
20 proceedings (AR 1039-70); an additional hearing was held before a new ALJ on February 12,  
21 2013. (AR 973-1004.) On March 15, 2013, the ALJ issued a partially favorable decision, finding  
22 Plaintiff was disabled from August 31, 2007, through June 15, 2009, but medical improvement  
23 occurred and Plaintiff was not disabled on or after June 16, 2009. (AR 932-47.)

#### 24 **1. Testimony of the Vocational Expert**

25 A Vocational Expert ("VE") appeared at the hearing on February 12, 2013, and testified.  
26 (AR 998-1001.) The ALJ posed several hypotheticals for the VE to consider. First, the ALJ  
27 asked the VE to consider a person who is the same age as Plaintiff and with the same education  
28 and work history who can lift and carry 20 pounds occasionally and 10 pounds frequently; sit,



1 stand, or walk six to eight hours per workday; only occasionally perform overhead reaching with  
2 the upper left extremity; limited to simple routine tasks; and can have only occasional public  
3 contact. (AR 998.) The VE testified that such a person could not perform Plaintiff's past work,  
4 but could perform other work such as silverware wrapper, garment sorter, and bottle line  
5 attendance. (AR 998.)

6 The ALJ posed a second hypothetical that involved an individual with the same limitations  
7 as set forth in the first hypothetical, but with added limitations: only occasional forceful gripping  
8 and/or grasping with the left upper extremity, which is the non-dominant hand; and no static or  
9 repetitive neck movements. (AR 999.) The VE testified there would be no change from the first  
10 hypothetical in the work that could be performed. (AR 1000.)

11 The ALJ posed a third hypothetical which included all the limitations from the second  
12 hypothetical and added an additional limitation: the left hand can be used only for 10 to 15  
13 minutes at a time without the need for rest, so essentially the person would be working one-  
14 handed. (AR 1000.) The VE testified there would be no work that a person with this added  
15 limitation could perform.

16 Plaintiff's counsel asked the VE to consider the first hypothetical with the added limitation  
17 that the person would not be able to reach with both hands forward more than one-third of the day.  
18 (AR 1000.) The VE testified there would be no jobs available for a person with those limitations.  
19 (AR 1000.) Plaintiff's counsel also asked the VE whether the garment sorter and the bottle line  
20 work identified by the VE require a worker to move his head more than 45 degrees fairly  
21 repetitively throughout the day. (AR 1001.) Assuming a person could not move his head more  
22 than 45 degrees fairly repetitively throughout the day, the VE testified that someone precluded  
23 from that type of motion more than occasionally would not be able to perform any work.  
24 (AR 1001.)

## 25 2. ALJ Decision

26 On March 15, 2013, the ALJ issued a decision, finding Plaintiff was disabled from August  
27 31, 2007, through June 15, 2009. (AR 941.) The ALJ also found that medical improvements  
28 occurred as of June 16, 2009, and determined that Plaintiff's disability ended on that date.

1 (AR 942.) Specifically, the ALJ found that Plaintiff (1) had not engaged in substantial gainful  
2 activity since August 31, 2007 (AR 936); (2) from August 31, 2007, through June 15, 2009, the  
3 period of disability, Plaintiff had severe impairments including left shoulder supraspinatus  
4 tendinosis, cervical degenerative disc disease, obesity, history of carpal tunnel syndrome, history  
5 of left arm injury, dysthymic disorder, pain disorder, personality disorder, cannabis dependence,  
6 alcohol dependence in remission, and possible PTSD (AR 936); (3) from August 31, 2007,  
7 through June 15, 2009, Plaintiff did not have an impairment or combination of impairments that  
8 met or medically equaled one of the listed impairments in 20 C.F.R. Part 404, Subpart P,  
9 Appendix 1 (AR 936); and (4) between August 31, 2007, and June 15, 2009, Plaintiff had the  
10 residual functional capacity ("RFC") to lift and carry 20 pounds occasionally and 10 pounds  
11 frequently; sit, stand and/or walk six to eight hours per eight-hour day; occasionally reach  
12 overhead with the left arm; occasionally forcefully grip and grasp with the left hand; cannot do  
13 static neck movements; can perform simple and routine tasks; and can have no contact with  
14 supervisors, coworkers, or the public. (AR 936). The ALJ concluded that between August 31,  
15 2007, and June 15, 2009, there were no jobs that existed in significant numbers in the national  
16 economy that Plaintiff could perform. (AR 941.)

17 The ALJ found that medical improvement occurred as of June 16, 2009, that increased  
18 Plaintiff's RFC, and Plaintiff's disability ended. (AR 942-43.) Plaintiff's RFC beginning on June  
19 16, 2009, included the capacity to lift and carry 20 pounds occasionally and 10 pounds frequently;  
20 sit, stand, and/or walk six to eight hours per eight hour day; occasionally reach overhead with the  
21 left arm; occasional forceful gripping and grasping with the left hand; not doing static neck  
22 movements; and performing simple routine tasks with occasional public contact. (AR 943.) The  
23 ALJ found that beginning on June 16, 2009, there have been jobs that exist in substantial numbers  
24 in the national economy that Plaintiff can perform. (AR 946.)

### 25 **3. Review before the Appeals Council**

26 Plaintiff filed exceptions to the ALJ's decision with the Appeals Council on April 15, 2013.  
27 (AR 5-8.) The Appeals Council determined the ALJ fully considered and evaluated the evidence  
28 and reached an appropriate conclusion on the issues. (AR 920-24.) Therefore, the Appeals

1 Council found no basis to assume jurisdiction of the ALJ's decision, and the ALJ's decision  
2 became the final decision of the Commissioner. 20 C.F.R. §§ 404.981, 416.1481.

3 **C. Plaintiff's Argument on Appeal**

4 On January 9, 2014, Plaintiff filed a complaint before this Court seeking review of the  
5 ALJ's decisions. In his opening brief, Plaintiff argues the ALJ made no clear showing of  
6 cessation of disability, gave inadequate reasons for rejecting the opinion of Dr. Howsepien, and  
7 argues that the credibility determination is not relevant to a medical improvement finding. (Doc.  
8 14.)

9 **SCOPE OF REVIEW**

10 The ALJ's decision denying benefits "will be disturbed only if that decision is not  
11 supported by substantial evidence or it is based upon legal error." *Tidwell v. Apfel*, 161 F.3d 599,  
12 601 (9th Cir. 1999). In reviewing the Commissioner's decision, the Court may not substitute its  
13 judgment for that of the Commissioner. *Macri v. Chater*, 93 F.3d 540, 543 (9th Cir. 1996).  
14 Instead, the Court must determine whether the Commissioner applied the proper legal standards  
15 and whether substantial evidence exists in the record to support the Commissioner's findings. *See*  
16 *Lewis v. Astrue*, 498 F.3d 909, 911 (9th Cir. 2007). "Substantial evidence is more than a mere  
17 scintilla but less than a preponderance." *Ryan v. Comm'r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th  
18 Cir. 2008). "Substantial evidence" means "such relevant evidence as a reasonable mind might  
19 accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971)  
20 (quoting *Consol. Edison Co. of N.Y. v. NLRB*, 305 U.S. 197, 229 (1938)). The Court "must  
21 consider the entire record as a whole, weighing both the evidence that supports and the evidence  
22 that detracts from the Commissioner's conclusion, and may not affirm simply by isolating a  
23 specific quantum of supporting evidence." *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir.  
24 2007) (citation and internal quotation marks omitted).

25 **APPLICABLE LAW**

26 An individual is considered disabled for purposes of disability benefits if he or she is  
27 unable to engage in any substantial, gainful activity by reason of any medically determinable  
28 physical or mental impairment that can be expected to result in death or that has lasted, or can be

expected to last, for a continuous period of not less than twelve months. 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A); *see also Barnhart v. Thomas*, 540 U.S. 20, 23 (2003). The impairment or impairments must result from anatomical, physiological, or psychological abnormalities that are demonstrable by medically accepted clinical and laboratory diagnostic techniques and must be of such severity that the claimant is not only unable to do her previous work, but cannot, considering her age, education, and work experience, engage in any other kind of substantial, gainful work that exists in the national economy. 42 U.S.C. §§ 423(d)(2)-(3), 1382c(a)(3)(B), (D).

The regulations provide that the ALJ must undertake a specific five-step sequential analysis in the process of evaluating a disability. In the First Step, the ALJ must determine whether the claimant is currently engaged in substantial gainful activity. 20 C.F.R. §§ 404.1520(b), 416.920(b). If not, in the Second Step, the ALJ must determine whether the claimant has a severe impairment or a combination of impairments significantly limiting her from performing basic work activities. *Id.* §§ 404.1520(c), 416.920(c). If so, in the Third Step, the ALJ must determine whether the claimant has a severe impairment or combination of impairments that meets or equals the requirements of the Listing of Impairments ("Listing"), 20 C.F.R. 404, Subpart P, App. 1. *Id.* §§ 404.1520(d), 416.920(d). If not, in the Fourth Step, the ALJ must determine whether the claimant has sufficient residual functional capacity despite the impairment or various limitations to perform her past work. *Id.* §§ 404.1520(f), 416.920(f). If not, in the Fifth Step, the burden shifts to the Commissioner to show that the claimant can perform other work that exists in significant numbers in the national economy. *Id.* §§ 404.1520(g), 416.920(g). If a claimant is found to be disabled or not disabled at any step in the sequence, there is no need to consider subsequent steps. *Tackett v. Apfel*, 180 F.3d 1094, 1098-99 (9th Cir. 1999); 20 C.F.R. §§ 404.1520, 416.920.

## DISCUSSION

**A. There is No Substantial Evidence Showing Medical Improvement**

Plaintiff argues the ALJ improperly determined that he had medical improvement such that he became not disabled as of June 16, 2009, which the Commissioner disputes.

1 The ALJ gave little weight to Dr. Swanson's January 2008 opinion (AR 393) and Dr.  
2 Garcia's March 2008 opinion (AR 503) that Plaintiff's impairments were non-severe, and the ALJ  
3 found Plaintiff to be unable to adequately relate with supervisors, co-workers, and the public at the  
4 time of these opinions. The ALJ credited Dr. Howsepian's opinion regarding Plaintiff's  
5 functioning prior to June 2009, but found his opinions after June 2009 not to be consistent with the  
6 medical record which the ALJ determined showed "significant improvement." (AR 939-40.)  
7 Specifically, the ALJ determined that as of June 16, 2009, Plaintiff could interact with co-workers,  
8 supervisors, and could have limited contact with the general public. According to the VE  
9 testimony, a person with this limitation – in addition to Plaintiff's other limitations which remained  
10 the same after June 2009 – would be able to perform alternative work in the national economy. As  
11 such, the ALJ concluded Plaintiff was unable to perform any work from August 31, 2007, through  
12 June 15, 2009, but on June 16, 2009, medical improvement occurred such that Plaintiff's disability  
13 ended.

#### 14 **1. Legal Standard – Medical Improvement**

15 Once a claimant is found to be disabled, cessation of disability may only be assessed  
16 following an eight-step sequential evaluation process. 20 C.F.R. § 404.1594(f). The eight-step  
17 analysis is as follows: (1) if a claimant is currently engaged in substantial gainful activity,  
18 disability has ended; (2) if not, and the claimant meets a Listing, then disability continues; (3) if  
19 the claimant does not meet or equal a listing, the ALJ will determine whether medical  
20 improvement has occurred (an increase in the claimant's RFC assessment); (5) if no medical  
21 improvement – or no improvement related to the ability to work has occurred – disability  
22 continues, unless certain exceptions apply (20 C.F.R. §§ 404.1594(d)-(e), (f)(5)); (6) if there has  
23 been medical improvement related to the claimant's ability to work, the ALJ will determine  
24 whether *all* the current impairments, in combination, are "severe," and if not, disability ends; (7) if  
25 the claimant meets the "severity" criteria, the ALJ will determine the current RFC and if the  
26 claimant is able to do past relevant work, disability ends; (8) if the claimant remains unable to do  
27 past work, the ALJ will determine whether the claimant can perform other work, given his RFC,  
28 age, education, and past work experience – if so, disability ends, if not then disability continues.

1  
2 Medical improvement is defined under the regulations as

3 any decrease in the medical severity of [a claimant's] impairment(s) which was  
4 present at the time of the most recent favorable medical decision that you were  
5 disabled or continued to be disabled. A determination that there has been a  
6 decrease in medical severity must be based on changes (improvement) in the  
symptoms, signs and/or laboratory findings associated with your impairment(s)  
(see § 404.1528).

7 20 C.F.R. § 404.1594(b)(1). Medical improvement is a term of art which refers to the "medical  
8 severity" of the impairments previously found disabling based solely on medical evidence  
9 consisting of "symptoms, signs and/or laboratory findings associated with those impairments."  
10 *Anderson v. Astrue*, 2008 WL 4500882, (C.D. Cal. Oct. 6, 2008) (quoting 20 C.F.R. §§  
11 404.1594(b)(1), 416.994(b)(1)(I)); *see also Threet v. Barnhart*, 353 F.3d 1185, 1190 n.7 (10th Cir.  
12 2003) (error for ALJ to base finding of medical improvement on rejection of claimant's statement  
13 of daily activities and a lack of medical attention).

## 14 **2. Analysis**

15 Plaintiff contends in finding him disabled prior to June 15, 2009, the ALJ concluded  
16 Plaintiff had significant social limitations and he was unable to relate to supervisors, co-workers,  
17 and the public. It was this limitation that precluded Plaintiff from being able to perform any work.  
18 The ALJ found medical improvement in June 2009 and concluded that after June 15, 2009,  
19 Plaintiff's social limitation could be reduced to only occasional public contact with no restriction  
20 on contact with co-workers or supervisors. (AR 943.) Plaintiff argues the ALJ's determination of  
21 improvement in this regard was based on a single treatment note of Dr. Howsepian's dated June  
22 15, 2009, in which Dr. Howsepian noted Plaintiff was in a "brighter mood." (AR 618, 943.)  
23 Plaintiff contends this isolated treatment note does not support a finding that Plaintiff's mental  
24 impairment had medically improved. Any improvement that may have been noted was temporary;  
25 as a whole, the record reflects Plaintiff's symptoms fluctuated with short periods of some  
26 improvement. Further, the ALJ did not discuss the evidence contradicting the finding there was  
27 medical improvement. For the same reason, Plaintiff argues the ALJ's rejection of Dr.  
28

1 Howsepian's opinions after June 2009 as inconsistent with his own treatment notes is similarly  
2 flawed.

3       The Commissioner emphasizes that the ALJ considered Dr. Howsepian's treating notes and  
4 the VA progress notes at length and argues the ALJ did not merely isolate a few areas of  
5 improvement. The Commissioner maintains the ALJ was entitled to interpret Dr. Howsepian's  
6 treating notes and other evidence as showing medical improvement of Plaintiff's mental condition  
7 after June 2009. Factually, the Commissioner emphasizes that Dr. Howsepian reported Plaintiff  
8 was doing better on multiple occasions after June 2009, Plaintiff's social workers consistently  
9 indicated Plaintiff was stable and able to live independently, and Plaintiff was making friends and  
10 had interacted appropriately during a dispute with Plaintiff's apartment manager. The ALJ  
11 discussed Plaintiff's outbursts of anger after June 2009 and indicated they were instances where  
12 Plaintiff was manipulative and aggressive until his needs were met, thus his anger was goal  
13 directed regarding specific situations. The Commissioner argues the ALJ's finding of medical  
14 improvement was based on substantial evidence, as was the ALJ's rejection of Dr. Howsepian's  
15 opinions after June 2009, and the ALJ properly weighed the evidence that was contrary to a  
16 finding of medical improvement.

17       When considering symptoms of mental disorders, "[r]eports of 'improvement' in the  
18 context of mental health issues must be interpreted with an understanding of the patient's overall  
19 well-being and nature of [his] symptoms." *Garrison v. Colvin*, 759 F.3d 995, 1017 (9th Cir.  
20 2014). Mental health treatment notes must be "interpreted with an awareness that improved  
21 functioning while being treated and while limiting environmental stressors does not always mean  
22 the claimant can function effectively in the workplace." *Id.* Further, exercising caution in  
23 inferring from treatment notes that a claimant is able to work is "especially appropriate when no  
24 doctor or other medical expert has opined, on the basis of a full review of all relevant records, that  
25 a mental health patient is capable of working or is prepared to return to work." *Id.*

26       In this case, Dr. Howsepian has been Plaintiff's treating psychiatrist since 2003, and has  
27 followed Plaintiff's mental condition on a monthly basis. He is regularly in contact with Plaintiff's  
28 VA social workers, and all of Plaintiff's VA interactions are logged in VA progress notes which

1 are available for Dr. Howsepian's review. In October 2009, Dr. Howsepian specifically opined  
2 Plaintiff had extreme limitation in the ability to interact with co-workers, supervisors, and the  
3 general public. (AR 815.) Since 2008, no other medical professional opined Plaintiff was not  
4 extremely limited in this regard. Plaintiff underwent a social security disability compensation  
5 examination in January 2008 with Dr. Swanson who opined Plaintiff would be able to "relate  
6 appropriately to others in a job setting" (AR 393), but this opinion was rejected by the ALJ for the  
7 period prior to 2009 as it was not consistent with the examination findings. (AR 939.) Dr. Garcia  
8 affirmed Dr. Swanson's opinion in March 2008, but this opinion was also given little weight by the  
9 ALJ. Neither of these opinions would have any relevance to Plaintiff's functioning in 2009  
10 through 2012 – as the opinions were only predicated on the evidence in the record as of the dates  
11 of the opinions.

12 The only medical evidence of Plaintiff's mental health other than Dr. Howsepian's opinions  
13 and the VA treating notes from 2009 through 2012 is an examination by Dr. Glenn for purposes of  
14 Plaintiff's claim for VA benefits. Dr. Glenn opined Plaintiff had moderate symptoms and assigned  
15 a GAF score of 55, but did not address Plaintiff's ability to interact with co-workers, supervisors,  
16 the general public, or Plaintiff's ability to perform at a job. (AR 594-95.) Dr. Glenn found  
17 Plaintiff's social and occupational impairment to be at a level of "reduced reliability and  
18 productivity due to the major depression," but he did not consider Plaintiff's ability to function  
19 with others in a workplace setting. Although Dr. Glenn noted "moderate" limitations – as opposed  
20 to extreme limitations – his opinion does not directly contradict Dr. Howsepian's October 2009  
21 opinion that while Plaintiff retained the ability to perform simple tasks, he had extreme limitation  
22 in the ability to relate to others in a workplace setting. (AR 815.) Because Dr. Glenn's opinion  
23 did not address Plaintiff's functionality in relationship to others in a work setting, the ALJ's  
24 assessment that Plaintiff was medically improved in 2009 such that he could interact appropriately  
25 with co-workers and supervisors appears predicated only on the ALJ's own assessment of Dr.  
26 Howsepian's treatment notes and the VA progress notes. While the ALJ is entitled to weigh  
27 contradictory medical opinions and resolve any ambiguities in the evidence, the ALJ is not  
28 permitted to interpret the treating physician's records and substitute her own opinion for that of the



1 treating physician. *Jenkins v. Astrue*, 628 F. Supp. 2d 1140, 1149 (C.D. Cal. 2009) ("It is  
2 axiomatic that as a treating physician and a specialist in orthopedics, Dr. Frey's interpretation of  
3 her objective and clinical findings trumps a contrary interpretation based on nothing more than the  
4 ALJ's conflicting view of their significance." (citing *Gonzalez Perez v. Sec'y of Health & Human*  
5 *Servs.*, 812 F.2d 747 (1st Cir. 1987))). Although Dr. Howsepian had noted Plaintiff was doing  
6 better on occasions in 2009 through 2012 (AR 618 (noting flashes of a brighter mood); AR 648  
7 (significantly improved but remained angry, frustrated, and depressed); 1261 (October 2012  
8 noting Plaintiff was brighter and lighter emotionally); 1474 (November 2009 noting Plaintiff was  
9 dramatically improved from September 2009); 1485 (September 2011 Dr. Howsepian notes  
10 Plaintiff is doing better than he had yet seen him); and 1733 (noting in February 2010 Plaintiff  
11 remained depressed, but was smiling more than Dr. Howsepian had seen), he explained very  
12 articulately why Plaintiff remained unable to interact with others in a workplace setting in his  
13 October 2009 report. Dr. Howsepian reasoned that due to Plaintiff's intense anger, irritability,  
14 cognitive distortions, and emotional instability, he reacted to perceived injustices and slights in a  
15 manner that is incompatible with gainful employment and with social situations generally.  
16 (AR 813-15.) The record strongly supports Dr. Howsepian's opinion of Plaintiff's functioning in  
17 this regard. Despite that Plaintiff was noted to have improved at various appointments, he also  
18 appeared in crisis in May 2011 (AR 1524), he continued to have angry conflicts with his social  
19 workers (AR 834, 1278-79), and angry interactions with his apartment managers (AR 833-35,  
20 1607). These events corroborates Dr. Howsepian's October 2009 opinion that when Plaintiff is  
21 "substantially stressed and confronted by those in authority, he is prone to become violent." (AR  
22 813.)

23 Although the ALJ interpreted Plaintiff's anger during various incidents from 2009 through  
24 2012 to be goal directed toward specific situations – and thus a method for obtaining what he  
25 wanted rather than a feature of his mental condition – Plaintiff's episodic anger appears quite  
26 consistent with Dr. Howsepian's October 2009 opinion regarding Plaintiff's irritability when  
27 challenged by anyone in authority, such as his social workers, addiction counselors, or apartment  
28 managers with whom Plaintiff had intense conflict at times in 2009 through 2012. The fact that

1 Plaintiff was able to navigate a disagreement with his apartment manager one time with the  
2 assistance of his social worker, was able to live alone, and seemed to be making friends with other  
3 veterans in his VA complex does not contradict Dr. Howsepian's view of Plaintiff's mental  
4 limitations. *See Holohan v. Massanari*, 246 F.3d 1195, 1205 (9th Cir. 2001) ("Dr. Oh's statements  
5 must be read in context of the overall diagnostic picture he draws. That a person who suffers from  
6 severe panic attacks, anxiety, and depression makes some improvement does not mean that the  
7 person's impairments no longer seriously affect her ability to function in a workplace.").

8 Moreover, the improvement noted by Dr. Howsepian in his treating notes was exclusively  
9 made in a clinical setting where Plaintiff experienced limited stressors, which is distinct from how  
10 a claimant could be expected to perform or function in a workplace. *Garrison*, 759 F.3d at 1017  
11 (notations of improvement "must also be interpreted with an awareness that improved functioning  
12 while being treated and while limiting environmental stressors does not always mean that a  
13 claimant can function effectively in a workplace"). Without a medical opinion regarding the  
14 improvement the ALJ inferred from Dr. Howsepian's treating notes and VA progress notes, the  
15 ALJ's interpretation of medical improvement is merely a substitute for Dr. Howsepian's October  
16 2008 and August 2012 opinions that Plaintiff had extreme limitations in his ability to relate to  
17 others in a workplace setting and that he was wholly unable to work. Notations of improvement in  
18 mood or appearance do not contradict or undermine Dr. Howsepian's explanation as to Plaintiff's  
19 functionality with others in a work setting or those in authority over him.

20 Absent a medical opinion in 2009 other than Dr. Howsepian's regarding Plaintiff's ability  
21 to work and/or relate to others in a workplace setting, there was no medical evidence from which  
22 the ALJ could infer Plaintiff's condition improved in 2009 other than her own interpretation of Dr.  
23 Howsepian's treating notes and the VA progress notes. The ALJ's lay interpretation of the Dr.  
24 Howsepian's treatment notes is an insufficient basis to find Plaintiff medically improved in 2009  
25 or to discredit Dr. Howsepian's opinions in October 2009 and August 2012.

## 26 **B. Remand for the Reinstatement of Benefits**

27 Because the Court cannot conclude there is substantial evidence supporting the ALJ's  
28 finding of medical improvement in 2009, Plaintiff's benefits should not have been terminated as of

1 June 16, 2009. The Ninth Circuit has held that "[b]enefits wrongfully terminated should be  
2 reinstated without further agency proceedings." *Iida v. Heckler*, 705 F.2d 363, 365 (9th Cir.  
3 1983.) As Congress has mandated that the Commissioner review a claimant's disability status  
4 every three years, *see* 42 U.S.C. § 421(i), no purpose is served by remanding the matter to the  
5 agency for further development of the record. Accordingly, the matter must be remanded only for  
6 the reinstatement of benefits.

### 7 **CONCLUSION**

8 Based on the foregoing, the Court finds that the ALJ's decision is not supported by  
9 substantial evidence and is, therefore, REVERSED and the case REMANDED to the ALJ for the  
10 reinstatement of benefits. The Clerk of this Court is DIRECTED to enter judgment in favor of  
11 Plaintiff Donald Schneider and against Defendant Carolyn W. Colvin, Acting Commissioner of  
12 Social Security.

13  
14  
15 IT IS SO ORDERED.

16 Dated: March 23, 2015

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE