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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LEON E. SULLIVAN,
Plaintiff,
v.
COMMISSIONER OF SOCIAL
SECURITY,
Defendant.

No. 2:13-cv-1460-KJN

ORDER

Plaintiff seeks judicial review of a final decision by the Commissioner of Social Security (“Commissioner”) denying plaintiff’s application for Supplemental Security Income (“SSI”) under Title XVI of the Social Security Act (“Act”).¹ In his motion for summary judgment, plaintiff principally contends that the Commissioner erred by finding that plaintiff was not disabled from March 3, 2010, the date that plaintiff’s application was filed, through the date of the ALJ’s decision. (ECF No. 16.) The Commissioner filed an opposition to plaintiff’s motion and a cross-motion for summary judgment. (ECF No. 17.) No optional reply brief was filed by plaintiff.

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¹ This action was initially referred to the undersigned pursuant to E.D. Cal. L.R. 302(c)(15), and both parties voluntarily consented to proceed before a United States Magistrate Judge for all purposes. (ECF Nos. 7, 9.)

1 For the reasons discussed below, the court DENIES plaintiff's motion for summary
2 judgment, GRANTS the Commissioner's cross-motion for summary judgment, and enters
3 judgment for the Commissioner.

4 I. BACKGROUND

5 Plaintiff was born on October 19, 1962, has a limited education, is able to communicate in
6 English, and has no past relevant work.² (Administrative Transcript ("AT") 18, 27-29, 46, 50,
7 128.) On March 3, 2010, plaintiff applied for SSI, alleging that he was unable to work as of
8 January 1, 1992, due to back pain, diabetes, high blood pressure, and hepatitis C. (AT 11, 122,
9 127.)³ On July 13, 2010, the Commissioner determined that plaintiff was not disabled. (AT 11,
10 52-56.) Upon plaintiff's request for reconsideration, that determination was affirmed on
11 September 14, 2010. (AT 11, 60-66.) Thereafter, plaintiff requested a hearing before an
12 administrative law judge ("ALJ"), which ultimately took place on August 2, 2011, and at which
13 plaintiff, represented by a non-attorney representative, testified. (AT 11, 24-45.)

14 In a decision dated November 25, 2011, the ALJ determined that plaintiff had not been
15 under a disability, as defined in the Act, from March 3, 2010, the date that plaintiff's application
16 was filed, through the date of the ALJ's decision. (AT 11-20.) The ALJ's decision became the
17 final decision of the Commissioner when the Appeals Council denied plaintiff's request for
18 review on May 25, 2013. (AT 2-5.) Thereafter, plaintiff filed this action in federal district court
19 on July 19, 2013, to obtain judicial review of the Commissioner's final decision. (ECF No. 1.)

20 II. ISSUES PRESENTED

21 Plaintiff has raised the sole issue of whether the ALJ improperly rejected the opinion of
22 consultative examining psychologist, Dr. Robin Campbell.⁴

23 ² Because the parties are familiar with the factual background of this case, including plaintiff's
24 medical history, the court does not exhaustively relate those facts in this order. The facts related
25 to plaintiff's impairments and treatment will be addressed insofar as they are relevant to the issues
26 presented by the parties' respective motions.

27 ³ Regardless of the alleged disability onset date, SSI is not payable prior to the month following
28 the month in which the application was filed. 20 C.F.R. § 416.335.

⁴ In the preliminary statement portion of plaintiff's motion for summary judgment, plaintiff also

1 III. LEGAL STANDARD

2 The court reviews the Commissioner’s decision to determine whether (1) it is based on
3 proper legal standards pursuant to 42 U.S.C. § 405(g), and (2) substantial evidence in the record
4 as a whole supports it. Tackett v. Apfel, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial
5 evidence is more than a mere scintilla, but less than a preponderance. Connett v. Barnhart, 340
6 F.3d 871, 873 (9th Cir. 2003) (citation omitted). It means “such relevant evidence as a reasonable
7 mind might accept as adequate to support a conclusion.” Orn v. Astrue, 495 F.3d 625, 630 (9th
8 Cir. 2007), quoting Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005). “The ALJ is
9 responsible for determining credibility, resolving conflicts in medical testimony, and resolving
10 ambiguities.” Edlund v. Massanari, 253 F.3d 1152, 1156 (9th Cir. 2001) (citation omitted). “The
11 court will uphold the ALJ’s conclusion when the evidence is susceptible to more than one rational
12 interpretation.” Tommasetti v. Astrue, 533 F.3d 1035, 1038 (9th Cir. 2008).

13 IV. DISCUSSION

14 A. Summary of the ALJ’s Findings

15 The ALJ evaluated plaintiff’s entitlement to SSI pursuant to the Commissioner’s standard
16 five-step analytical framework.⁵ At the first step, the ALJ concluded that plaintiff had not

17 states, in passing, that the ALJ failed to properly consider plaintiff’s testimony. (ECF No. 16 at
18 3.) However, because plaintiff’s brief provides no substantive argument and legal authorities in
19 that regard, any such issue is waived. See Officers for Justice v. Civil Serv. Comm’n of San
Francisco, 979 F.2d 721, 726 (9th Cir. 1992) (“We will not ordinarily consider matters on appeal
20 that are not specifically and distinctly raised and argued in appellant’s opening brief.”).

21 ⁵ Disability Insurance Benefits are paid to disabled persons who have contributed to the Social
22 Security program. 42 U.S.C. §§ 401 et seq. Supplemental Security Income is paid to disabled
23 persons with low income. 42 U.S.C. §§ 1382 et seq. Both provisions define disability, in part, as
24 an “inability to engage in any substantial gainful activity” due to “a medically determinable
25 physical or mental impairment. . . .” 42 U.S.C. §§ 423(d)(1)(a) & 1382c(a)(3)(A). A parallel
26 five-step sequential evaluation governs eligibility for benefits under both programs. See 20
C.F.R. §§ 404.1520, 404.1571-76, 416.920 & 416.971-76; Bowen v. Yuckert, 482 U.S. 137, 140-
27 42 (1987). The following summarizes the sequential evaluation:

26 Step one: Is the claimant engaging in substantial gainful activity? If so, the
27 claimant is found not disabled. If not, proceed to step two.

28 Step two: Does the claimant have a “severe” impairment? If so, proceed to step
three. If not, then a finding of not disabled is appropriate.

1 engaged in substantial gainful activity since March 3, 2010, the date that plaintiff's SSI
2 application was filed. (AT 13.) At step two, the ALJ determined that plaintiff had the following
3 severe impairments: degenerative disc disease of the lumbar spine, osteopenia and spurring of the
4 thoracic spine, aortic stenosis, diabetes mellitus, hypertension, hepatitis C, obesity, depressive
5 disorder, anxiety disorder, and cannabis dependence. (Id.) However, at step three, the ALJ
6 determined that plaintiff did not have an impairment or combination of impairments that met or
7 medically equaled the severity of an impairment listed in 20 C.F.R. Part 404, Subpart P,
8 Appendix 1. (AT 14.)

9 Before proceeding to step four, the ALJ assessed plaintiff's residual functional capacity
10 ("RFC") as follows:

11 After careful consideration of the entire record, the undersigned
12 finds that the claimant has the residual functional capacity to
13 perform light work as defined in 20 CFR 416.967(b) except: he
14 could lift, carry, push and/or pull 20 pounds occasionally and 10
15 pounds frequently; he could stand and/or walk for about 6 hours in
16 an 8-hour workday; he could sit for about 6 hours in an 8-hour
workday; he could frequently perform postural activities, except
that he could occasionally climb ladders, ropes, and scaffolds; he is
unable to work at heights or around heavy machinery; and he is
limited to performing simple, unskilled work involving no frequent
contact with the public or coworkers.

17 (AT 16.)

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20 Step three: Does the claimant's impairment or combination of impairments meet or
21 equal an impairment listed in 20 C.F.R., Pt. 404, Subpt. P, App. 1? If so, the
claimant is automatically determined disabled. If not, proceed to step four.

22 Step four: Is the claimant capable of performing his past relevant work? If so, the
23 claimant is not disabled. If not, proceed to step five.

24 Step five: Does the claimant have the residual functional capacity to perform any
25 other work? If so, the claimant is not disabled. If not, the claimant is disabled.

26 Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir. 1995).

27 The claimant bears the burden of proof in the first four steps of the sequential evaluation
28 process. Bowen, 482 U.S. at 146 n.5. The Commissioner bears the burden if the sequential
evaluation process proceeds to step five. Id.

1 At step four, the ALJ found that plaintiff had no past relevant work. (AT 18.) Finally, at
2 step five, the ALJ determined that, considering plaintiff's age, education, work experience, and
3 RFC, there were jobs that existed in significant numbers in the national economy that plaintiff
4 could perform. (AT 19.)

5 Accordingly, the ALJ concluded that plaintiff had not been under a disability, as defined
6 in the Act, from March 3, 2010, the date that plaintiff's SSI application was filed, through the
7 date of the ALJ's decision. (AT 19.)

8 B. Plaintiff's Substantive Challenge to the Commissioner's Determinations

9 Plaintiff contends that the ALJ improperly rejected certain portions of the May 20, 2010
10 opinion of consultative examining psychologist, Dr. Robin Campbell. That argument is
11 unpersuasive.

12 The weight given to medical opinions depends in part on whether they are proffered by
13 treating, examining, or non-examining professionals. Holohan v. Massanari, 246 F.3d 1195,
14 1201-02 (9th Cir. 2001); Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995). Ordinarily, more
15 weight is given to the opinion of a treating professional, who has a greater opportunity to know
16 and observe the patient as an individual. Id.; Smolen v. Chater, 80 F.3d 1273, 1285 (9th Cir.
17 1996). To evaluate whether an ALJ properly rejected a medical opinion, in addition to
18 considering its source, the court considers whether (1) contradictory opinions are in the record;
19 and (2) clinical findings support the opinions. An ALJ may reject an uncontradicted opinion of a
20 treating or examining medical professional only for "clear and convincing" reasons. Lester, 81
21 F.3d at 830-31. In contrast, a contradicted opinion of a treating or examining professional may be
22 rejected for "specific and legitimate" reasons. Lester, 81 F.3d at 830. The opinion of a non-
23 examining professional, without other evidence, is insufficient to reject the opinion of a treating
24 or examining professional. Lester, 81 F.3d at 831.

25 In this case, the ALJ properly gave little weight to the portion of Dr. Campbell's opinion
26 that plaintiff had "moderate to marked difficulty in relating appropriately to the public,
27 supervisors, and co-workers due to mood instability" and that plaintiff's "ability to withstand the
28 stress and changes associated with an eight-hour workday and day-to-day work activities [was]

1 moderately impaired.” (AT 214.) As the ALJ recognized, Dr. Campbell diagnosed plaintiff with
2 an anxiety disorder not otherwise specified, cannabis dependence, and malingering, explaining
3 that the results from psychological testing performed during the evaluation were “not considered
4 to be a reasonably accurate presentation of the claimant’s cognitive and psychological functioning
5 given his very poor effort.” (AT 18, 211, 213.) Thus, Dr. Campbell herself seriously questioned
6 the validity of her assessment given plaintiff’s poor effort and malingering. (AT 214 [“The
7 findings are limited by the validity of the test results, observations, review of records and
8 interaction with the claimant....”].)⁶

9 Furthermore, even assuming *arguendo* that Dr. Campbell endorsed the social functioning
10 and stress limitations without reservation, they were unsupported by Dr. Campbell’s own
11 findings. Notably, although Dr. Campbell found plaintiff to have impaired insight and judgment,
12 and some impairment in social and common sense understanding, she also noted plaintiff to have
13 fair hygiene, normal alertness and orientation, normal psychomotor activity, normal speech and
14 language, normal affect, normal thought processes and thought content, no memory impairment,
15 no obvious cognitive delays, no attention deficits, adequate concentration, and a fair fund of
16 knowledge during the mental status examination. (AT 210-11.) As the ALJ observed, Dr.
17 Campbell apparently based the assessed social functioning and stress limitations on plaintiff’s
18 “mood instability.” (AT 18, 214.) However, Dr. Campbell provided no explanation, and made
19 no specific findings, regarding mood instability, other than noting plaintiff’s own subjective
20 statement that his mood was “not good.” (AT 210.) Plaintiff’s subjective reports alone cannot
21 support the mental limitations at issue, especially given Dr. Campbell’s diagnosis of malingering.
22 See Tommasetti v. Astrue, 533 F.3d 1035, 1041 (9th Cir. 2008) (holding that an ALJ may reject a
23 medical source’s opinion if it was based to a large extent on the claimant’s self-reports that have

24 _____
25 ⁶ Plaintiff argues that Dr. Campbell “made clear” that plaintiff’s poor effort during the evaluation
26 was a manifestation of his mental impairments. (ECF No. 16 at 7.) However, that argument
27 lacks any support in the record. Even though Dr. Campbell found that plaintiff had impaired
28 insight and judgment, and some impairment in social and common sense understanding, Dr.
Campbell never attributed plaintiff’s poor effort during the evaluation to his mental impairments.
Instead, she diagnosed plaintiff with malingering. (AT 213.) That diagnosis is entirely
inconsistent with the interpretation of Dr. Campbell’s report suggested by plaintiff.

1 been properly discounted as incredible).

2 Finally, the ALJ's decision to discount the social functioning and stress limitations in Dr.
3 Campbell's report is further bolstered by the opinions of the state agency psychiatrists, who, after
4 reviewing plaintiff's records, both concluded that there was insufficient evidence of a mental
5 impairment. (AT 215, 260.) Additionally, even though treatment notes by plaintiff's primary
6 care providers sometimes referenced pressured speech and a possible mood disorder, the notes
7 frequently reflected that plaintiff had a stable mood, normal affect, normal thought content, and
8 appropriate speech. (AT 17, 173, 178, 180, 241, 267, 281.)

9 Therefore, the ALJ provided specific and legitimate reasons to reject the more severe
10 social functioning and stress limitations contained in Dr. Campbell's report. Contrary to
11 plaintiff's argument, the ALJ did not improperly substitute his lay opinion for Dr. Campbell's
12 opinion. It is the ALJ's responsibility to formulate an RFC that is based on the record *as a whole*,
13 and thus the RFC need not exactly match the opinion or findings of any particular medical source.
14 See Magallanes v. Bowen, 881 F.2d 747, 753 (9th Cir. 1989) ("It is not necessary to agree with
15 everything an expert witness says in order to hold that his testimony contains substantial
16 evidence"); De Fletes v. Colvin, 2013 WL 1345724, at **2-5 (N.D. Cal. Mar. 31, 2013); Ceballos
17 v. Astrue, 2011 WL 3847141, at *8 (E.D. Cal. Aug. 30, 2011). Here, the ALJ considered and
18 weighed the conflicting evidence in the record, and ultimately imposed some social functioning
19 limitations – limiting plaintiff to simple, unskilled work involving no frequent contact with the
20 public or coworkers. (AT 16.) Those social limitations appear reasonable given that plaintiff
21 stated that he ran errands, shopped, rode the bus, went to the park, at times lived in a homeless
22 mission, went to the movies, visited the library, and sometimes socialized with acquaintances.
23 (AT 30, 32, 210.) Moreover, even if this court could have evaluated the evidence differently, the
24 court defers, as it must, to the ALJ's reasonable and rational resolution of any ambiguities and
25 inconsistencies.

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V. CONCLUSION

For the foregoing reasons, the court finds that the ALJ's decision was free from prejudicial error and supported by substantial evidence in the record as a whole. Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's motion for summary judgment (ECF No. 16) is denied.
2. The Commissioner's cross-motion for summary judgment (ECF No. 17) is granted.
3. Judgment is entered for the Commissioner.
4. The Clerk of Court shall close this case.

IT IS SO ORDERED.

Dated: November 24, 2014


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE