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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

JAVIS JENKINS,

No. 2:16-CV-1137-CMK

Plaintiff,

vs.

MEMORANDUM OPINION AND ORDER

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

_____ /

Plaintiff, who is proceeding with retained counsel, brings this action under 42 U.S.C. § 405(g) for judicial review of a final decision of the Commissioner of Social Security. Pursuant to the written consent of all parties, this case is before the undersigned as the presiding judge for all purposes, including entry of final judgment. See 28 U.S.C. § 636(c). Pending before the court are plaintiff’s motion for summary judgment (Doc. 19) and defendant’s cross-motion for summary judgment (Doc. 25).

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I. PROCEDURAL HISTORY

Plaintiff applied for social security benefits on June 28, 2012. In the application, plaintiff claims that disability began on May 11, 2012. Plaintiff's claim was initially denied. Following denial of reconsideration, plaintiff requested an administrative hearing, which was held on May 20, 2014, before Administrative Law Judge ("ALJ") Bradlee S. Welton. In an October 30, 2014, decision, the ALJ concluded that plaintiff is not disabled based on the following relevant findings:

1. The claimant has the following severe impairment(s): diabetes mellitus with peripheral neuropathy, and bipolar disorder;
2. The claimant does not have an impairment or combination of impairments that meets or medically equals an impairment listed in the regulations;
3. The claimant has the following residual functional capacity: the claimant can perform light work except he should have the option every 30 minutes to change position between standing and sitting for one to two minutes at the work station; he can occasionally climb ramps and stairs; he is limited to simple, routine and repetitive tasks with no public interaction and only occasional interaction with co-workers but no tandem tasks with the co-workers; and
4. Considering the claimant's age, education, work experience, residual functional capacity, and vocational expert testimony, there are jobs that exist in significant numbers in the national economy that the claimant can perform.

18 After the Appeals Council declined review on April 21, 2016, this appeal followed.

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II. STANDARD OF REVIEW

21 The court reviews the Commissioner's final decision to determine whether it is:
22 (1) based on proper legal standards; and (2) supported by substantial evidence in the record as a
23 whole. See Tackett v. Apfel, 180 F.3d 1094, 1097 (9th Cir. 1999). "Substantial evidence" is
24 more than a mere scintilla, but less than a preponderance. See Saelee v. Chater, 94 F.3d 520, 521
25 (9th Cir. 1996). It is "... such evidence as a reasonable mind might accept as adequate to
26 support a conclusion." Richardson v. Perales, 402 U.S. 389, 402 (1971). The record as a whole,

1 including both the evidence that supports and detracts from the Commissioner's conclusion, must
2 be considered and weighed. See Howard v. Heckler, 782 F.2d 1484, 1487 (9th Cir. 1986); Jones
3 v. Heckler, 760 F.2d 993, 995 (9th Cir. 1985). The court may not affirm the Commissioner's
4 decision simply by isolating a specific quantum of supporting evidence. See Hammock v.
5 Bowen, 879 F.2d 498, 501 (9th Cir. 1989). If substantial evidence supports the administrative
6 findings, or if there is conflicting evidence supporting a particular finding, the finding of the
7 Commissioner is conclusive. See Sprague v. Bowen, 812 F.2d 1226, 1229-30 (9th Cir. 1987).
8 Therefore, where the evidence is susceptible to more than one rational interpretation, one of
9 which supports the Commissioner's decision, the decision must be affirmed, see Thomas v.
10 Barnhart, 278 F.3d 947, 954 (9th Cir. 2002), and may be set aside only if an improper legal
11 standard was applied in weighing the evidence, see Burkhart v. Bowen, 856 F.2d 1335, 1338 (9th
12 Cir. 1988).

14 III. DISCUSSION

15 Plaintiff argues that the ALJ failed to provide clear and convincing reasons for
16 rejecting the opinions of treating physicians, Drs. Marzano and Marasigan. The weight given to
17 medical opinions depends in part on whether they are proffered by treating, examining, or
18 non-examining professionals. See Lester v. Chater, 81 F.3d 821, 830-31 (9th Cir. 1995).
19 Ordinarily, more weight is given to the opinion of a treating professional, who has a greater
20 opportunity to know and observe the patient as an individual, than the opinion of a non-treating
21 professional. See id.; Smolen v. Chater, 80 F.3d 1273, 1285 (9th Cir. 1996); Winans v. Bowen,
22 853 F.2d 643, 647 (9th Cir. 1987). The least weight is given to the opinion of a non-examining
23 professional. See Pitzer v. Sullivan, 908 F.2d 502, 506 & n.4 (9th Cir. 1990).

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1 In addition to considering its source, to evaluate whether the Commissioner
2 properly rejected a medical opinion the court considers whether: (1) contradictory opinions are
3 in the record; and (2) clinical findings support the opinions. The Commissioner may reject an
4 uncontradicted opinion of a treating or examining medical professional only for “clear and
5 convincing” reasons supported by substantial evidence in the record. See Lester, 81 F.3d at 831.
6 While a treating professional’s opinion generally is accorded superior weight, if it is contradicted
7 by an examining professional’s opinion which is supported by different independent clinical
8 findings, the Commissioner may resolve the conflict. See Andrews v. Shalala, 53 F.3d 1035,
9 1041 (9th Cir. 1995). A contradicted opinion of a treating or examining professional may be
10 rejected only for “specific and legitimate” reasons supported by substantial evidence. See Lester,
11 81 F.3d at 830. This test is met if the Commissioner sets out a detailed and thorough summary of
12 the facts and conflicting clinical evidence, states her interpretation of the evidence, and makes a
13 finding. See Magallanes v. Bowen, 881 F.2d 747, 751-55 (9th Cir. 1989). Absent specific and
14 legitimate reasons, the Commissioner must defer to the opinion of a treating or examining
15 professional. See Lester, 81 F.3d at 830-31. The opinion of a non-examining professional,
16 without other evidence, is insufficient to reject the opinion of a treating or examining
17 professional. See id. at 831. In any event, the Commissioner need not give weight to any
18 conclusory opinion supported by minimal clinical findings. See Meanel v. Apfel, 172 F.3d 1111,
19 1113 (9th Cir. 1999) (rejecting treating physician’s conclusory, minimally supported opinion);
20 see also Magallanes, 881 F.2d at 751.

21 **A. Dr. Marzano**

22 As to Dr. Marzano, the ALJ stated:

23 The undersigned gives no weight to Dr. Marzano’s May 2, 2014, opinion
24 that the claimant has marked and extreme limitations (Exhibit 11F). Such
25 severe assessments are inconsistent with the objective findings
26 documented in the treating records from his facility (*see* Exhibit 10F). As
noted above, the treating records show normal mental status examinations
by the doctor (Exhibit 10F, pp. 29, 75), by another doctor (Exhibit 10F, p.
92), and by therapists (Exhibit 10F, pp. 61, 73). In addition, the claimant’s

1 symptoms are well controlled with medications (Exhibit 10F, p. 5). It is
2 also notable that Dr. Marzano stated on July 6, 2012, that the claimant was
3 “[s]omewhat entitled in his presentation” (Exhibit 1F, p. 6).

4 Plaintiff argues that the ALJ’s conclusion is belied by the record which shows: (1) a Global
5 Assessment of Functioning (“GAF”) score of 50; (2) irritability, apathy, and depressed mood;
6 (3) hospitalization in May 2012; and (4) increases in dosages of medications. As to medications,
7 plaintiff adds: “How the ALJ can find that plaintiff was stable on his medications is unclear when
8 Dr. Marzano’s records show that they were not working and were repeatedly increased. . . .”

9 The court finds no error in the ALJ’s rejection of Dr. Marzano’s opinions. First,
10 plaintiff’s own subjective complaints of symptoms are insufficient to support the doctor’s
11 assessment, particularly given that the ALJ rejected plaintiff’s statements as not credible and
12 plaintiff does not challenge that finding. Further, despite evidence that plaintiff was hospitalized
13 in May 2012 and that dosages on medications were adjusted, the record reflects that plaintiff
14 continued to work after this hospitalization and after the alleged onset date of May 11, 2012.
15 Specifically, a May 30, 2012, progress note from Sacramento County Mental Health reflects that
16 plaintiff reported “that he got a new job with the franchise tax board and that he is doing very
17 well with the job.” Given plaintiff’s demonstrated ability to work even after hospitalization and
18 with increased dosages of medications, the ALJ did not err in rejecting Dr. Marzano’s opinions
19 of marked and extreme limitations.

20 **B. Dr. Marasigan**

21 Citing the record at pages 387-88 and 443, plaintiff states that “Dr. Marasigan
22 specifically indicat[ed] that plaintiff could not work” and argues:

23 The ALJ simply does not deal with the opinions of Dr. Marasigan
24 with respect to his opinions repeatedly stated throughout 2012 that
25 plaintiff is unable to work. The ALJ failed to reject the opinion of this
26 treating physician by providing specific and legitimate reasons for doing
so that are based on substantial evidence in the record. (citation omitted).

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