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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KEVIN JENSEN
Plaintiff,
v.
COMMISSIONER OF SOCIAL SECURITY,
Defendant.

No. 2:16-cv-1428-KJN

ORDER

Plaintiff Kevin Jensen seeks judicial review of a final decision by the Commissioner of Social Security (“Commissioner”) denying plaintiff’s application for Disability Insurance Benefits (“DIB”) and Supplemental Security Income (“SSI”) under Titles II and XVI, respectively, 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 February 15, 2009, plaintiff’s alleged disability onset date, through October 24, 2014, the date of the administrative law judge’s (“ALJ”) decision. (ECF No. 19.) The Commissioner opposed plaintiff’s motion and filed a cross-motion for summary judgment. (ECF No. 20.) No optional

¹ This action was referred to the undersigned pursuant to Local Rule 302(c)(15), and both parties voluntarily consented to proceed before a United States Magistrate Judge for all purposes. (ECF Nos. 8, 9, 12.)

1 reply brief was filed.

2 After carefully considering the record and the parties' briefing, the court DENIES
3 plaintiff's motion for summary judgment, GRANTS the Commissioner's cross-motion for
4 summary judgment, and AFFIRMS the Commissioner's final decision.

5 I. BACKGROUND

6 Plaintiff was born on May 3, 1966; completed 14 years of education and obtained an
7 Associate's Degree in Criminal Justice; can communicate in English; and previously worked as
8 an automotive technician. (Administrative Transcript ("AT") 35, 50-51.)² On July 30, 2012,
9 plaintiff applied for DIB, alleging that his disability began on February 15, 2009. Additionally,
10 plaintiff filed for SSI on August 21, 2013, again alleging disability beginning on February 15,
11 2009. Plaintiff claimed that he was disabled due to degenerative disc disease, carpal tunnel,
12 depression, trouble sleeping, asthma, breathing problems, hypertension, and arthritis. (AT 25, 27,
13 209.) After plaintiff's application was denied initially and on reconsideration, an ALJ conducted
14 a hearing on May 6, 2014. (AT 44-72.) The ALJ subsequently issued a decision dated October
15 24, 2014, determining that plaintiff had not been under a disability, as defined in the Act, from
16 February 15, 2009, plaintiff's alleged disability onset date, through the date of the ALJ's decision.
17 (AT 22-43.) The ALJ's decision became the final decision of the Commissioner when the
18 Appeals Council denied plaintiff's request for review on April 20, 2016. (AT 1-7.) Plaintiff
19 subsequently filed this action on June 23, 2016, to obtain judicial review of the Commissioner's
20 final decision. (ECF No. 1.)

21 II. ISSUES PRESENTED

22 On appeal, plaintiff raises the following issues: (1) whether the ALJ failed to properly
23 account for plaintiff's mental impairments; and (2) whether the ALJ improperly rejected the
24 opinion of plaintiff's treating physician, Dr. Sultan.³

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

28 ³ The third issue identified in plaintiff's brief concerns the requested remedy for the alleged ALJ

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 Summary of the ALJ’s Findings

15 The ALJ evaluated plaintiff’s entitlement to DIB and SSI pursuant to the Commissioner’s
16 standard five-step analytical framework.⁴ As an initial matter, the ALJ determined that plaintiff
17 errors.

18 ⁴ Disability Insurance Benefits are paid to disabled persons who have contributed to the Social
19 Security program. 42 U.S.C. §§ 401 et seq. Supplemental Security Income is paid to disabled
20 persons with low income. 42 U.S.C. §§ 1382 et seq. Both provisions define disability, in part, as
21 an “inability to engage in any substantial gainful activity” due to “a medically determinable
22 physical or mental impairment. . . .” 42 U.S.C. §§ 423(d)(1)(a) & 1382c(a)(3)(A). A parallel
23 five-step sequential evaluation governs eligibility for benefits under both programs. See 20
24 C.F.R. §§ 404.1520, 404.1571-76, 416.920 & 416.971-76; Bowen v. Yuckert, 482 U.S. 137, 140-
25 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.

Step three: Does the claimant’s impairment or combination of impairments meet or
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.

1 met the insured status requirements of the Act for purposes of DIB through June 30, 2014. (AT
2 27.) At the first step, the ALJ concluded that plaintiff had not engaged in substantial gainful
3 activity since February 15, 2009, his alleged disability onset date. (Id.) At step two, the ALJ
4 found that plaintiff had the following severe impairments: mild degenerative disc disease of the
5 thoracic spine, moderate carpal tunnel syndrome of the left wrist, mild carpal tunnel syndrome of
6 the right wrist, mild degenerative joint disease of the right and left shoulders, and obesity. (Id.)
7 However, at step three, the ALJ determined that plaintiff did not have an impairment or
8 combination of impairments that met or medically equaled the severity of an impairment listed in
9 20 C.F.R. Part 404, Subpart P, Appendix 1. (AT 30.)

10 Before proceeding to step four, the ALJ assessed plaintiff's RFC, finding that plaintiff
11 could perform light work as defined in 20 C.F.R. § 404.1567(b) and § 416.967(b), except that
12 plaintiff could:

13 lift and carry 25 pounds occasionally, 20 pounds frequently, and sit,
14 stand and walk for 6 hours each in an 8-hour day. The claimant can
15 frequently climb, but occasionally climb ladders, ropes, and
16 scaffolds. The claimant can frequently balance, stoop, kneel,
17 crouch, and crawl. The claimant can frequently finger and handle
18 and frequently perform overhead reaching with both arms.

19 (Id.) At step four, the ALJ determined that plaintiff was unable to perform any past relevant
20 work. (AT 34.) However, at step five the ALJ found that, in light of plaintiff's age, education,
21 work experience, RFC, and the vocational expert's ("VE") testimony, there were jobs that existed
22 in significant numbers in the national economy that plaintiff could perform. (AT 35.)

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

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

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

28 The claimant bears the burden of proof in the first four steps of the sequential evaluation
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 his ability to maintain attention and concentration for extended
2 periods; his ability to perform activities within a schedule, maintain
3 regular attendance, and be punctual with customary tolerance; and
4 his ability to complete a normal workday and workweek without
5 interruption from psychologically-based symptoms and to perform
6 at a consistent pace without an unreasonable number and length of
7 rest periods.

8 Id. After the ALJ utilized the grids at step five to determine that the claimant was not disabled,
9 the claimant contended on appeal that the ALJ was required to seek vocational expert testimony
10 regarding the limitations assessed. Id. at 1075. The Ninth Circuit rejected this argument, holding
11 that these moderate limitations were not sufficiently severe to prohibit the ALJ from relying on
12 the grids without the assistance of a vocational expert. Id. at 1077. Thus, the mild to moderate
13 mental limitations assessed by Dr. Moore here do not even require VE testimony.

14 Moreover, in this case, a VE testified and identify several representative occupations,
15 including three light and three sedentary occupations involving unskilled (SVP 2 level) work, that
16 the plaintiff could perform. (AT 36.) Such occupations are plainly not precluded by the mild to
17 moderate limitations assessed by Dr. Moore, because they involve simple, non-complex work and
18 logically have lesser concentration demands. Therefore, even if the ALJ had specifically included
19 such mental limitations in the RFC, it would have been inconsequential to the case outcome.

20 Finally, even though plaintiff makes much of the fact that Dr. Moore assessed a GAF
21 score of 50, suggestive of serious symptoms or impairment, GAF scores are not dispositive in
22 Social Security cases and do not directly correlate to Social Security severity assessments.
23 Trinchere v. Astrue, 2008 WL 4395283, at *6 (C.D. Cal. Sept. 3, 2008). A low GAF score does
24 not alone determine disability, but is a piece of evidence to be considered with the rest of the
25 record. Olds v. Astrue, 2008 WL 339757, at *4 (D. Kan. Feb. 5, 2008). An ALJ is permitted to
26 discredit a GAF score where it is unsupported by the evidence. Clark v. Astrue, 2009 WL
27 542166, at *6 (C.D. Cal. Mar. 4, 2009). Here, the ALJ permissibly gave Dr. Moore's GAF score
28 little weight, because it is inconsistent with the mild to moderate mental limitations specifically
assessed in Dr. Moore's opinion.

Therefore, the court concludes that the ALJ properly accounted for plaintiff's mental

1 impairments, and that any technical error was harmless.

2 *Whether the ALJ improperly rejected the opinion of plaintiff's treating*
3 *physician, Dr. Sultan*

4 The weight given to medical opinions depends in part on whether they are proffered by
5 treating, examining, or non-examining professionals. Holohan v. Massanari, 246 F.3d 1195,
6 1201-02 (9th Cir. 2001); Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995). Generally speaking,
7 a treating physician's opinion carries more weight than an examining physician's opinion, and an
8 examining physician's opinion carries more weight than a non-examining physician's opinion.
9 Holohan, 246 F.3d at 1202.

10 To evaluate whether an ALJ properly rejected a medical opinion, in addition to
11 considering its source, the court considers whether (1) contradictory opinions are in the record;
12 and (2) clinical findings support the opinions. An ALJ may reject an uncontradicted opinion of a
13 treating or examining medical professional only for "clear and convincing" reasons. Lester, 81
14 F.3d at 830-31. In contrast, a contradicted opinion of a treating or examining professional may be
15 rejected for "specific and legitimate" reasons. Id. at 830. While a treating professional's opinion
16 generally is accorded superior weight, if it is contradicted by a supported examining
17 professional's opinion (supported by different independent clinical findings), the ALJ may
18 resolve the conflict. Andrews v. Shalala, 53 F.3d 1035, 1041 (9th Cir. 1995) (citing Magallanes
19 v. Bowen, 881 F.2d 747, 751 (9th Cir. 1989)). The regulations require the ALJ to weigh the
20 contradicted treating physician opinion, Edlund, 253 F.3d at 1157,⁵ except that the ALJ in any
21 event need not give it any weight if it is conclusory and supported by minimal clinical findings.
22 Meanel v. Apfel, 172 F.3d 1111, 1114 (9th Cir. 1999) (treating physician's conclusory, minimally
23 supported opinion rejected); see also Magallanes, 881 F.2d at 751. The opinion of a non-
24 examining professional, by itself, is insufficient to reject the opinion of a treating or examining
25 professional. Lester, 81 F.3d at 831.

26 _____
27 ⁵ The factors include: (1) length of the treatment relationship; (2) frequency of examination; (3)
28 nature and extent of the treatment relationship; (4) supportability of diagnosis; (5) consistency;
and (6) specialization. 20 C.F.R. § 404.1527.

1 On July 3, 2012, plaintiff's treating physician, Dr. Sultan A. Sultan, provided a four-page
2 physical capacities evaluation essentially finding plaintiff completely disabled. (AT 307-10.)
3 Based on diagnoses of discogenic disease, carpal tunnel syndrome, and severe degenerative joint
4 disease, Dr. Sultan opined, *inter alia*, that plaintiff could only sit for two hours out of an eight
5 hour workday and only stand and walk for one hour each. (AT 307, 310.) Furthermore, Dr.
6 Sultan noted that the plaintiff could only occasionally lift up to 5 pounds, and could only use his
7 hands for grasping, pushing, pulling, and fine manipulation for between 5 and 10% of an eight
8 hour workday. (AT 308.) Because Dr. Sultan's opinion was contradicted by other medical
9 opinions in the record, the ALJ was required to provide specific and legitimate reasons for
10 discounting Dr. Sultan's opinion. For the reasons discussed below, the court finds that the ALJ
11 properly discharged that duty.

12 As an initial matter, the ALJ reasonably gave Dr. Sultan's July 3, 2012 opinion little
13 weight, because it is conclusory, minimally supported, and "without substantial support from
14 objective clinical or diagnostic findings...." (AT 34.) Indeed, the March 27, 2012 X-rays
15 requested by Dr. Sultan showed no significant degenerative changes in plaintiff's lumbar spine,
16 and only mild multilevel degenerative disc disease in plaintiff's thoracic spine. (AT 311-12.)
17 Furthermore, a nerve conduction study performed on June 13, 2012, revealed only moderate
18 carpal tunnel syndrome on the left and mild carpal tunnel syndrome on the right. (AT 313-17.)
19 Dr. Sultan's opinion entirely fails to explain why such mild to moderate clinical findings would
20 render plaintiff completely disabled.

21 The ALJ also substantially relied on the opinion of consultative examiner, Dr. Jay
22 Keystone, who personally examined plaintiff on January 16, 2013. (AT 33-34, 345-50.) Dr.
23 Keystone noted plaintiff's complaints related to his back, hands, asthma, hypertension, and
24 obesity, but also observed that plaintiff walked independently into the examination room with a
25 normal gait. (AT 347-49.) Upon examination, a straight leg raising test was negative bilaterally;
26 plaintiff had normal motor strength/muscle bulk in all extremities; and a sensory examination and
27 reflexes were normal in all extremities. (AT 347-48.) Dr. Keystone found no evidence of
28 deformities, swelling, spasms, or tenderness on palpation or percussion of plaintiff's joints or

1 extremities. (AT 348.) Dr. Keystone diagnosed plaintiff with probable mild osteoarthritis
2 resulting in plaintiff's back and finger joint pain, mild bronchial asthma, and hypertension, but
3 opined that plaintiff had no physical functional limitations beyond pulmonary precautions due to
4 plaintiff's asthma. (AT 349.) Because Dr. Keystone personally examined plaintiff and made
5 independent clinical findings, his opinion constitutes substantial evidence on which the ALJ was
6 entitled to rely.

7 Furthermore, the ALJ properly relied on the opinion of non-examining state agency
8 physician Dr. Jaituni, who reviewed plaintiff's records on February 1, 2013, and opined that
9 plaintiff did not have a severe physical impairment. (AT 34, 78.) See Tonapetyan v. Halter, 242
10 F.3d 1144, 1149 (9th Cir. 2001) ("Although the contrary opinion of a non-examining medical
11 expert does not alone constitute a specific, legitimate reason for rejecting a treating or examining
12 physician's opinion, it may constitute substantial evidence when it is consistent with other
13 independent evidence in the record.").

14 Finally, although Dr. Sultan indicated that plaintiff's symptoms and medications
15 frequently interfered with the attention and concentration required to perform even simple work-
16 related tasks (AT 307), plaintiff himself indicated that he could pay attention for "a long time,"
17 finished what he started, and could follow written and spoken instructions "very well." (AT 255.)
18 Thus, as the ALJ noted, Dr. Sultan's opinion clearly overstated plaintiff's limitations, reducing
19 the persuasiveness of the opinion. (AT 34.)

20 Therefore, the court finds that the ALJ provided several specific and legitimate reasons for
21 discounting Dr. Sultan's opinion.

22 V. CONCLUSION

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

- 26 1. Plaintiff's motion for summary judgment (ECF No. 19) is DENIED.
- 27 2. The Commissioner's cross-motion for summary judgment (ECF No. 20) is
28 GRANTED.

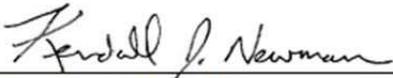
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3. The final decision of the Commissioner is AFFIRMED, and judgment is entered for the Commissioner.

4. The Clerk of Court shall close this case.

IT IS SO ORDERED.

Dated: June 20, 2017


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE