

United States District Court
Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

JACOB WALTZ,
Plaintiff,
v.
NANCY A. BERRYHILL,
Defendant.

Case No. 17-cv-06654-LB
**ORDER DENYING PLAINTIFF’S
MOTION FOR SUMMARY
JUDGMENT AND GRANTING
DEFENDANT’S CROSS-MOTION**
Re: ECF Nos. 26 & 27

INTRODUCTION

Plaintiff Jacob Waltz seeks judicial review of a final decision by the Commissioner of the Social Security Administration denying his claim for disability benefits under Title II and Title XVI of the Social Security Act.¹ He moved for summary judgment.² The Commissioner opposed the motion and filed a cross-motion for summary judgment.³ Under Civil Local Rule 16-5, the matter is submitted for decision by this court without oral argument. All parties consented to

¹ Compl. – ECF No.1 at 1; Motion for Summary Judgment (“Motion”) – ECF No. 26 at 5–11. Record citations refer to the Electronic Case File (“ECF”); pinpoint citations are to the ECF-generated page numbers at the top of documents.

² Motion – ECF No. 26.

³ Cross-Mot. – ECF No. 27.

1 magistrate-judge jurisdiction.⁴ The court denies the plaintiff’s motion and grants the
2 Commissioner’s cross-motion.

3 **STATEMENT**

4 **1. Procedural History**

5 On January 28, 2014, Mr. Waltz, born on August 28, 1971, filed claims for social-security
6 disability insurance (“SSDI”) under Title II of the Social Security Act⁵ (“SSA”) and supplemental
7 security income (“SSI”) under Title XVI.⁶ He alleged affective disorder,⁷ personality disorder,
8 anxiety, chronic insomnia, degenerative disc disease, hypertension, blood clots in his right leg,
9 Tendonitis in his left leg, sprains, and strains.⁸ He alleged an onset date of September 15, 2011.⁹
10 The Social Security Administration denied the application initially¹⁰ and on reconsideration.¹¹ On
11 February 19, 2015, Mr. Waltz requested a hearing.¹² On May 26, 2016, Administrative Law Judge
12 (“ALJ”) Suzanne Krolkowski held a hearing in San Rafael, California.¹³ Attorney Dan McCaskell
13 represented Mr. Waltz.¹⁴ Mr. Waltz and vocational expert Robert Cottle testified in person.¹⁵ On
14 September 8, 2016, the ALJ issued an unfavorable decision.¹⁶ Mr. Waltz appealed the decision to
15
16

17 ⁴ Consent Forms – ECF Nos. 5, 9.

18 ⁵ See AR 266–72. Administrative Record (“AR”) citations refer to the page numbers in the bottom
right hand corner of the Administrative Record.

19 ⁶ See AR 136–37.

20 ⁷ Specifically, as to his alleged affective disorder, Mr. Waltz alleged manic depression, bipolar
21 disorder, restlessness, post-traumatic-stress disorder (“PTSD”), and obsessive-compulsive disorder
 (“OCD”). AR 102, 119.

22 ⁸ See AR 24, 102, 119.

23 ⁹ See AR 266, 273.

24 ¹⁰ AR 173–76, 177–81.

25 ¹¹ AR 185–89, 190–94.

26 ¹² AR 195–96.

27 ¹³ See AR 50–97.

28 ¹⁴ See AR 50.

¹⁵ See AR 50–51.

¹⁶ AR 19.

1 the Appeals Council on September 30, 2016.¹⁷ On October 2, 2017, the Appeals Council denied
2 his request.¹⁸ On November 17, 2017, Mr. Waltz filed this action for judicial review¹⁹ and
3 subsequently moved for summary judgment on August 16, 2018.²⁰ The Commissioner opposed
4 the motion and filed a cross-motion for summary judgment.²¹

5
6 **2. Summary of Record and Administrative Findings**

7 **2.1 Medical Records**

8 **2.1.1 Les Kalman, M.D., Psy.D. — Examining**

9 On March 15, 2011, before the alleged onset date, and in connection with an earlier claim, Les
10 Kalman, M.D., Psy.D., a psychiatrist, conducted a psychiatric evaluation of Mr. Waltz.²² Mr.
11 Waltz’s chief complaint was that he was tired and experienced difficulty sleeping “for the past 26
12 years.”²³ He reported feeling depressed, stressed, and anxious and experiencing auditory
13 hallucinations telling him to hurt people.²⁴ He also reported past homicidal thoughts, which were
14 not directed at anyone in particular.²⁵ His last job was in November 2010 as In Home Support
15 Service for his mother.²⁶ He stated that he could no longer work in that capacity because he had
16 difficulty caring for his mother and would “get mad at people or just feel too stressed.”²⁷ Dr.
17 Kalman noted that Mr. Waltz had no past psychiatric conditions.²⁸

18
19 _____
20 ¹⁷ AR 262–63.

21 ¹⁸ AR 1–6.

22 ¹⁹ Complaint – ECF No. 1.

23 ²⁰ Motion – ECF No. 26.

24 ²¹ Cross-Mot. – ECF No. 27.

25 ²² AR 423–27.

26 ²³ AR 423.

27 ²⁴ AR 423, 425.

28 ²⁵ AR 423.

²⁶ AR 424.

²⁷ *Id.*

²⁸ *Id.*

1 Dr. Kalman noted that Mr. Waltz was pleasant and cooperative, he spoke at an average rate
2 and volume, and his eye contact was good.²⁹ Mr. Waltz’s level of functioning included the
3 following: doing his own shopping, cooking, and housekeeping; managing his own transportation;
4 caring for his personal hygiene; and paying his bills.³⁰

5 Dr. Kalman opined that Mr. Waltz was able to relate to supervisors, co-workers, and peers.³¹
6 Mr. Waltz also was able to understand and carry out simple work instructions, maintain attention,
7 concentration and memory, and withstand the stress and pressures associated with daily work.³²
8 Dr. Kalman diagnosed Mr. Waltz with cyclothymia,³³ ruled out schizoaffective disorder, and noted
9 Mr. Waltz’s sustained polysubstance dependence.³⁴

10 **2.1.2 Brookwood Health Center — Treating**

11 Mr. Waltz visited Brookwood Health Center on various occasions from November 2011
12 through July 2014.³⁵ On November 28, 2011, Theresa Wade, a family nurse practitioner (“FNP”),
13 saw Mr. Waltz regarding antidepressant medication.³⁶ Mr. Waltz stated that he had been “angry
14 and raging” as well as “withdrawn from life, apathetic.”³⁷ He reported hearing voices, “sometimes
15 an actress’s voice and sometimes voices he does not recognize. The voices t[old] him to hurt other
16 people — to hit/kick/throw them on the ground.”³⁸ He heard those voices “daily for the past 2
17
18

19 ²⁹ *Id.*

20 ³⁰ AR 425.

21 ³¹ *Id.*

22 ³² AR 425–26.

23 ³³ “[T]he essential feature of Cyclothymic Disorder [cyclothymia] is a chronic, fluctuating mood
24 disturbance involving numerous periods of hypomanic symptoms . . . and numerous periods of
depressive symptoms.” *Reynolds v. Apfel*, 1 F. Supp. 2d 223, 224 n.2 (W.D.N.Y. 1998) (internal
citation omitted).

25 ³⁴ AR 426.

26 ³⁵ *See* AR 440, 446–47, 451–52, 462, 465–66, 472, 480–81.

27 ³⁶ AR 480.

28 ³⁷ *Id.*

³⁸ *Id.*

1 months consistently” when his “anger start[ed] up.”³⁹ He also experienced some visual
2 hallucinations.⁴⁰ FNP Wade noted that Mr. Waltz was stressed.⁴¹ Based on FNP Wade’s
3 assessment, Mr. Waltz had the following conditions: psychosis; hypothyroidism; and insomnia.⁴²
4 FNP Wade prescribed Mr. Waltz Abilify for psychosis, Levothyroxine for hypothyroidism, and
5 Amitriptyline for insomnia.⁴³ During a March 2012 visit, Mr. Waltz reported sleeping well since
6 taking Elavil and Benadryl.⁴⁴

7 In March 2013, FNP Wade saw Mr. Waltz regarding pain in the lower calf of his right leg.⁴⁵
8 Mr. Waltz stated that he had a blood clot in this leg approximately ten years prior.⁴⁶ Mr. Waltz
9 admitted that he used “meth” in the past and that he had been using it again.⁴⁷ He also stated he
10 may have hit his right leg while riding his bike but was uncertain.⁴⁸ He was living “on the streets”
11 and wanted to do “the Orenda Center 31 day program and then their aftercare program” but
12 needed to first save money for the programs.⁴⁹ FNP Wade noted that Mr. Waltz appeared to be
13 pleasant, alert, and in normal affect and mood and that he walked with a limp.⁵⁰ FNP Wade
14 referred him to ultrasound imaging to rule out deep-vein thrombosis (“DVT”) in his right leg.⁵¹
15 The ultrasound was unremarkable.⁵²

16
17
18 ³⁹ *Id.*

19 ⁴⁰ *Id.*

20 ⁴¹ AR 481.

21 ⁴² *Id.*

22 ⁴³ *Id.*

23 ⁴⁴ AR 472.

24 ⁴⁵ AR 465.

25 ⁴⁶ *Id.*

26 ⁴⁷ *Id.*

27 ⁴⁸ *Id.*

28 ⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ AR 466.

⁵² AR 440.

1 In April 2014, Suegee Tamar Mattis, D.O., a doctor of osteopathic medicine and family
2 practitioner, saw Mr. Waltz regarding Mr. Waltz’s thyroid condition and throat pain.⁵³ Dr. Mattis
3 noted that Mr. Waltz appeared pleasant, alert, and in normal affect and mood.⁵⁴ Dr. Mattis stated
4 that Mr. Waltz likely had GERD (gastroesophageal reflux disease), rather than thyroid issues, and
5 recommended that Mr. Waltz take Omeprazole.⁵⁵

6 In July 2014, FNP Mary C. Papsco saw Mr. Waltz regarding insomnia and a mole on his
7 cheek.⁵⁶ FNP Papsco reported that Mr. Waltz was not sleeping well. He did not sleep much at
8 night and needed to sleep during the day to catch up on sleep.⁵⁷ He also needed a bed pass for Sam
9 Jones, a homeless shelter.⁵⁸ FNP Papsco refilled Mr. Waltz’s sleep medication.⁵⁹ In regard to the
10 mole on his cheek, FNP Papsco noted that the mole was not normal and that she wanted to have it
11 removed and tested.⁶⁰ She noted that it would swell up and sometimes break open and bleed.⁶¹

12 **2.1.3 Michael Kozart, M.D. — Treating**

13 On January 30, 2013, Michael Kozart, M.D., a psychiatrist, saw Mr. Waltz for a follow-up
14 visit.⁶² Mr. Waltz reported that he had been off his medications for “a while.”⁶³ He was homeless
15 and living outside under a bridge.⁶⁴ At the time, he was applying for General Assistance (“GA”)
16 benefits and was on food stamps and County Medical Services Program (“CMSP”) benefits.⁶⁵ He

17
18 _____
19 ⁵³ AR 451.

20 ⁵⁴ *Id.*

21 ⁵⁵ AR 452.

22 ⁵⁶ AR 446.

23 ⁵⁷ *Id.*

24 ⁵⁸ *Id.*; *see also* AR 534.

25 ⁵⁹ AR 447.

26 ⁶⁰ AR 446.

27 ⁶¹ *Id.*

28 ⁶² AR 467.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

1 had not yet applied for disability benefits.⁶⁶ His anger issues “remain[ed] a problem” and led to
2 Mr. Waltz losing his job as a building manager in 2009.⁶⁷ Dr. Kozart treated an infection on Mr.
3 Waltz’s finger and advised that he quit smoking.⁶⁸

4 In July 2013, Dr. Kozart saw Mr. Waltz regarding Mr. Waltz’s medications.⁶⁹ Mr. Waltz stated
5 that had not taken levothyroxine “for many months,” intermittently took Metoprolol, and took
6 100–150 mg of Amitriptyline.⁷⁰ Mr. Waltz reported that he was homeless, living under a bridge,
7 and had been clean and sober for four days.⁷¹ He also reported that he “[s]till smokes MJ.”⁷² Dr.
8 Kozart ordered lab tests and advised Mr. Waltz to continue Metoprolol and increase Amitriptyline,
9 as needed, for sleep.⁷³

10 Dr. Kozart saw Mr. Waltz again in February 2014.⁷⁴ Mr. Waltz reported that he applied for
11 social security.⁷⁵ He stated he could not work because he had a learning disability.⁷⁶ He claimed he
12 could not think “as fast as other people.”⁷⁷ His last job was at Target, where he was supposed to
13 re-stock items, but he “couldn’t do it fast enough for his supervisors/managers.”⁷⁸ “When he began
14 to falter, [he] lost his patience, got angry, and was fired.”⁷⁹ Dr. Kozart examined Mr. Waltz and
15
16
17

18 ⁶⁶ *Id.*

19 ⁶⁷ *Id.*

20 ⁶⁸ AR 467–69.

21 ⁶⁹ AR 463.

22 ⁷⁰ *Id.*

23 ⁷¹ *Id.* The record also indicated that Mr. Waltz had “no [substance] use for 3 years.” *See id.*

24 ⁷² *Id.*

25 ⁷³ AR 464.

26 ⁷⁴ AR 454.

27 ⁷⁵ *Id.*

28 ⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

1 noted that Mr. Waltz appeared calm, spoke fluently, and was alert and logical.⁸⁰ Dr. Kozart also
2 noted that “[e]ssentially [Mr. Waltz] gets very angry when asked to complete tasks.”⁸¹

3 On November 17, 2014, Dr. Kozart saw Mr. Waltz for psychiatric services.⁸² Mr. Waltz
4 reported “a chronic inability to work due to a number of MH [mental health] issues,” which Mr.
5 Waltz defined as “[d]epression, [a]nxiety, PTSD, [b]ipolar, [and] learning disability.”⁸³ He
6 believed that because he had “been knocked out before, [his] brain doesn’t work like other
7 peoples.”⁸⁴ Also, his memory “doesn’t work.”⁸⁵

8 Mr. Waltz reported that he had not pursued vocational rehabilitation therapy.⁸⁶ He also
9 reported that he had recovered from alcohol and hard drugs but was still using marijuana.⁸⁷ He
10 was still “homeless, outdoors” and stated that he did not stay at the Sam Jones shelter because he
11 wanted to spend time with family over the holidays.⁸⁸ Dr. Kozart recommended that Mr. Waltz
12 consider vocational rehabilitation, quit cannabis, and follow up with his therapist.⁸⁹

13 **2.1.4 Jamie Larson, Psy.D. — Examining**

14 On July 26, 2014, Jamie Larson, Psy.D., a psychologist, conducted a psychiatric evaluation of
15 Mr. Waltz for disability purposes.⁹⁰ Mr. Waltz reported that a diagnosis of bipolar disorder,
16 chronic insomnia, and anxiety issues.⁹¹ When asked to elaborate on his bipolar difficulties, Mr.

17
18 _____
19 ⁸⁰ *Id.*

20 ⁸¹ *Id.*

21 ⁸² AR 589.

22 ⁸³ *Id.*

23 ⁸⁴ *Id.*

24 ⁸⁵ *Id.*

25 ⁸⁶ *Id.*

26 ⁸⁷ *Id.*

27 ⁸⁸ *Id.* “[I]n general, one only gets a 2 day pass from the shelter, and [Mr. Waltz] occasionally visits
with family to spend more than 2 nights [sic].”

28 ⁸⁹ AR 589–90.

⁹⁰ AR 428–32.

⁹¹ AR 428.

1 Waltz stated that he was “frequently irritable.”⁹² Mr. Waltz reported various anxiety symptoms,
2 including agitation, fearfulness, irritability, and difficulty concentrating.⁹³ He reported that his
3 mood depended on the amount of sleep he got in any given night.⁹⁴ He also reported that he sank
4 into a “deep depression” approximately four to five times per week and sometimes multiple times
5 per day.⁹⁵

6 In regard to his educational history, Mr. Waltz reported that he dropped out of high school in
7 the 11th grade but then later returned.⁹⁶ He was kicked out of school “due to memory
8 difficulties.”⁹⁷ Mr. Waltz reported that he had never been formally diagnosed with a learning
9 disability, and he had not taken special-education classes, but he expressed a suspicion that he
10 should have been so diagnosed.⁹⁸ Regarding his work history, Mr. Waltz reported that he last
11 worked in 2011 as a stocker for Target.⁹⁹ He was “fired because he could not fulfill his obligations
12 due to his psychiatric symptoms.”¹⁰⁰ Mr. Waltz denied current use of alcohol or drugs, stating that
13 he had not used drugs since January 18, 2014.¹⁰¹

14 Mr. Waltz reported that, on a typical day, if he had not received much sleep, he lacked
15 motivation and did “virtually nothing throughout the day.”¹⁰² If he had slept, he typically would
16 shower, eat, go to the bread line, and hang out in parks; but he “usually stay[ed] to himself due to
17
18
19

20 ⁹² *Id.*

21 ⁹³ *Id.*

22 ⁹⁴ *Id.*

23 ⁹⁵ *Id.*

24 ⁹⁶ AR 429.

25 ⁹⁷ *Id.*

26 ⁹⁸ *Id.*

27 ⁹⁹ *Id.*

28 ¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

1 his anxiety.”¹⁰³ Mr. Waltz reported “longing for the manic episodes” because they gave him
2 “energy and focus” but would also “quickly fade into depression.”¹⁰⁴

3 Dr. Larson reported that Mr. Waltz was able to maintain focus throughout the evaluation with
4 no need for redirection.¹⁰⁵ Mr. Waltz was well-groomed and dressed appropriately for the
5 season.¹⁰⁶ He gave good eye contact and had a pleasant attitude.¹⁰⁷ No “loose associations or
6 confusion” were indicated.¹⁰⁸ There was also no indication of psychotic thought processes, and
7 Mr. Waltz denied suicidal and homicidal ideation.¹⁰⁹ Dr. Larson noted that Mr. Waltz’s remote
8 memory was “mildly impaired” and that his delayed recall was “severely impaired” —
9 specifically, Mr. Waltz recalled “0/3 objects after a short delay and could not even guess.”¹¹⁰ Mr.
10 Waltz’s fund knowledge was moderately impaired.¹¹¹ He also indicated that he was unable to do
11 calculations.¹¹²

12 Dr. Larson concluded that if Mr. Waltz were allotted benefits, he would likely require a
13 payee.¹¹³ Mr. Waltz appeared to have mild difficulty performing simple and repetitive tasks and
14 moderate difficulty performing detailed and complex tasks.¹¹⁴ “In particular, abstract thinking
15 [was] quite challenging for him as all as any calculations,” he appeared to get distracted, and had
16 “some difficulty focusing.”¹¹⁵ Mr. Waltz overall had good insight.¹¹⁶ Moreover, though Mr. Waltz

17
18 ¹⁰³ *Id.*

19 ¹⁰⁴ *Id.*

20 ¹⁰⁵ AR 430.

21 ¹⁰⁶ *Id.*

22 ¹⁰⁷ *Id.*

23 ¹⁰⁸ *Id.*

24 ¹⁰⁹ *Id.*

25 ¹¹⁰ *Id.*

26 ¹¹¹ *Id.*

27 ¹¹² *Id.*

28 ¹¹³ AR 432.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

1 had only mild difficulty accepting instructions from supervisors, there was “a likelihood of
2 moderate to severe difficulties interacting with coworkers and the public on a consistent basis.”¹¹⁷
3 Mr. Waltz “would likely need some additional instructions to perform work activities
4 consistently.”¹¹⁸

5 Dr. Larson further found that Mr. Waltz “would have severe difficulty maintaining regular
6 attendance in the workplace or completing a normal workweek without disruptions from a
7 psychiatric condition.”¹¹⁹ In addition, “stressors encountered in the workplace would lead to a
8 likely rapid deterioration or decompensation of [Mr. Waltz’s] functioning.”¹²⁰

9 **2.1.5 Steven E. Gerson, D.O. — Examining**

10 On August 14, 2014, Steven E. Gerson, D.O., a doctor of osteopathic medicine and internist,
11 conducted an internal medicine evaluation of Mr. Waltz at the request of the Bureau of Disability
12 Adjudication Services from California.¹²¹ Mr. Waltz’s chief complaint was chronic insomnia.¹²²
13 He reported that Amitriptyline “helped a little” with his sleep pattern.¹²³ He stated that he felt tired
14 “almost all the time” and that his memory could be “off.”¹²⁴ He also stated that when sleep
15 deprived, he heard “more voices.”¹²⁵ He reported that his insomnia was “gradually getting worse”
16 over time.¹²⁶ He also reported “mild nonspecific pain in the midline lumbar spine.”¹²⁷

17
18
19
20
21
22
23
24
25
26
27
28

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ AR 482–89.

¹²² AR 482.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ AR 483.

¹²⁷ AR 485.

1 Mr. Waltz reported that he quit drinking alcohol the year prior and that after he quit drinking,
2 his sleep patterns worsened.¹²⁸ Mr. Waltz was not aware of any liver disease or any other problems
3 resulting from prior alcohol consumption.¹²⁹ Mr. Waltz reported that, at thirty years old, he had
4 DVT in his left leg.¹³⁰ He had chronic swelling of the left leg as a result of the DVT.¹³¹ Mr. Waltz
5 stated that he could walk up to half a mile at a time before stopping “due to the foot pain and flat
6 feet.”¹³² He also stated that he could use a mobile bicycle for up to two to three miles at a time.¹³³

7 Dr. Gerson noted that Mr. Waltz had smoked for twenty-four years and smoked half a pack of
8 cigarettes per day.¹³⁴ He also noted that Mr. Waltz last worked in 2010 as a shelf-stocker at
9 Target.¹³⁵ At the time of the exam, Mr. Waltz was well-developed, well-nourished, properly
10 dressed, coherent, and cooperative.¹³⁶

11 Dr. Gerson noted that Mr. Waltz was able to relate to him, follow instructions without
12 difficulty, and was “not unstable.”¹³⁷ He also noted that Mr. Waltz’s short term memory was
13 mildly decreased at times, and his long term memory was “grossly intact.”¹³⁸ Mr. Waltz had no
14 need for an assistive device.¹³⁹ Dr. Gerson diagnosed Mr. Waltz with chronic insomnia and
15 histories of the following conditions: DVT; pes planus; elevated blood pressure; “possibly a little”
16 arthritis; a bicycle injury with chest plate contusion and back pain; and thyroid disease.¹⁴⁰

18 ¹²⁸ AR 482.

19 ¹²⁹ *Id.*

20 ¹³⁰ AR 482–83.

21 ¹³¹ AR 483.

22 ¹³² *Id.*

23 ¹³³ *Id.*

24 ¹³⁴ *Id.*

25 ¹³⁵ *Id.* According to other reports in the record, Mr. Waltz last worked — at Target — in 2011, not
26 2010. *See, e.g.*, AR 429.

27 ¹³⁶ AR 484.

28 ¹³⁷ AR 485.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ AR 486.

1 Dr. Gerson reported that Mr. Waltz had the following functional limitations: (1) occasionally
2 lifting and carrying fifty pounds and frequently carrying and lifting twenty-five pounds; (2)
3 standing and/or walking for up to six hours in an eight-hour workday; (3) frequently climbing,
4 balancing, and kneeling and occasionally stooping/bending, crouching/squatting, and crawling; (4)
5 and frequently restricted regarding heights and moving machinery due to insomnia and back
6 pain.¹⁴¹ Dr. Gerson also noted that Mr. Waltz carried a heavy backpack plus another heavy bag
7 “without obvious pain, awkwardness or distress.”¹⁴²

8 **2.1.6 Marcos Lopez, Ph.D. — Treating**

9 Dr. Lopez treated Mr. Waltz on multiple occasions between January 2015 and March 2016.¹⁴³
10 On January 27, 2015, Dr. Lopez saw Mr. Waltz regarding Mr. Waltz’s anxiety, bipolar disorder,
11 blood clots in the right leg, and tendonitis in the left leg.¹⁴⁴ Mr. Waltz reported that he had alcohol
12 problems in the past and was involved with AA (alcoholics anonymous).¹⁴⁵ He also reported that
13 he was homeless and wanted to get SSI benefits.¹⁴⁶ Dr. Lopez indicated that Mr. Waltz had
14 “[m]oderately severe depression.”¹⁴⁷ Mr. Waltz reported that he was “clean and sober” and had not
15 abused alcohol for three years.¹⁴⁸ Mr. Waltz had normal speech, appropriate appearance and
16 behavior, and his thought process was intact coherent.¹⁴⁹ He reported memory problems.¹⁵⁰

17 On December 21, 2015, Dr. Lopez completed a mental-residual functional-capacity
18 questionnaire for Mr. Waltz.¹⁵¹ As of that time, Dr. Lopez had treated Mr. Waltz “for the past
19

20 ¹⁴¹ AR 486–87.

21 ¹⁴² AR 487.

22 ¹⁴³ See, e.g., AR 556–58, AR 540–41, AR 538–39.

23 ¹⁴⁴ AR 556.

24 ¹⁴⁵ *Id.*

25 ¹⁴⁶ *Id.*

26 ¹⁴⁷ AR 556–58.

27 ¹⁴⁸ AR 557.

28 ¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ AR 491–95.

1 year, approximately once every month.”¹⁵² He reported that Mr. Waltz “suffer[ed] from significant
2 insomnia [and] manic symptoms that le[d] him to engage in risky behaviors (e.g. sexual
3 promiscuity).”¹⁵³ Dr. Lopez noted that Mr. Waltz’s response to treatment had been “minimal due
4 to significant stressors (homeless [and] no [f]inancial income).”¹⁵⁴ Dr. Lopez identified the
5 following signs and symptoms: impairment in impulse control; generalized persistent anxiety;
6 sleep disturbance; substance dependence (past); memory impairment; and decreased need for
7 sleep.¹⁵⁵

8 In regard to Mr. Waltz’s ability to do work-related activities on a day-to-day basis, Dr. Lopez
9 opined as follows. As to Mr. Waltz’s mental ability and aptitude to do unskilled work, Dr. Lopez
10 opined that Mr. Waltz was “[s]eriously limited, but not precluded” in the following five (out of
11 sixteen total) categories: (1) maintaining attention for two hours; (2) maintaining regular
12 attendance and punctuality; (3) completing normal workday and workweek without interruptions
13 from psychologically based symptoms; (4) performing at consistent pace without an unreasonable
14 number and length of rest periods; and (5) dealing with normal work stress.¹⁵⁶ Mr. Waltz’s work-
15 related abilities were “limited but satisfactory” with regard to remembering work-like procedures,
16 understanding, remembering, and carrying out “very short and simply instructions,” sustaining an
17 ordinary routine without special supervision, make simple work-related decisions, getting along
18 with co-workers or peers without “unduly distracting them or exhibiting behavioral extremes,” and
19 responding appropriately to changes in a routine work setting, amongst other tasks.¹⁵⁷ Dr. Lopez
20 further provided that Mr. Waltz’s “attention [and] ability to focus and ability to maintain a
21
22
23

24 ¹⁵² AR 491.
25 ¹⁵³ *Id.*
26 ¹⁵⁴ *Id.*
27 ¹⁵⁵ AR 492.
28 ¹⁵⁶ AR 493.
¹⁵⁷ *Id.*

1 consistent schedule is severely impaired due to his manic symptoms inhibiting his ability to sleep
2 (suffer from insomnia), as well as imparting his impulse control.”¹⁵⁸

3 As to Mr. Waltz’s ability to aptitude to do semiskilled and skilled work, Dr. Lopez opined that
4 Mr. Waltz was “[s]eriously limited, but not precluded” in each of the four categories: (1)
5 understanding and remembering detailed instructions; (2) carrying out detailed instructions; (3)
6 setting realistic goals or making plans independently of others; and (4) dealing with stress of
7 semiskilled and skilled work.¹⁵⁹

8 As to Mr. Waltz’s ability and aptitude to do particular types of jobs, Dr. Lopez opined that Mr.
9 Waltz could do the following without limitation: (1) adhere to basic standards of neatness and
10 cleanliness; (2) travel in unfamiliar places; and (3) use public transportation.¹⁶⁰ Mr. Waltz’s
11 abilities were “[l]imited but satisfactory” regarding interacting appropriately with the general
12 public and maintaining socially appropriate behavior.¹⁶¹

13 Dr. Lopez stated that Mr. Waltz’s impairments lasted, or could be expected to last, at least
14 twelve months.¹⁶² He also stated that Mr. Waltz was not a malingerer.¹⁶³ Dr. Lopez opined that
15 Mr. Waltz would have difficulty working at regular job on a sustained basis because his “lack of
16 permanent housing is a severe barrier” as well as “the insomnia that accompanies it” and “issues
17 of safety.”¹⁶⁴ Dr. Lopez stated that Mr. Waltz could manage benefits in his best interests and that
18 Mr. Waltz did not have a low IQ or reduced intellectual functioning.¹⁶⁵

19
20
21
22
23
24
25
26
27
28

¹⁵⁸ *Id.*

¹⁵⁹ AR 494.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² AR 495.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

1 Dr. Lopez treated Mr. Waltz again January 29, 2016.¹⁶⁶ They discussed recent events that
2 contributed to Mr. Waltz’s “depressive emotional state,” including relationship problems and an
3 argument Mr. Waltz had with his mother.¹⁶⁷ Dr. Lopez recommended that Mr. Waltz practice
4 “grounding tools” to improve his mood and consider writing letters to cope with the loss of his
5 friend.¹⁶⁸

6 On March 16, 2016, Dr. Lopez saw Mr. Waltz for a follow-up session.¹⁶⁹ Dr. Lopez noted Mr.
7 Waltz’s bipolar disorder, homelessness, and substance abuse in remission.¹⁷⁰ Mr. Waltz reported
8 improvements in his personal relationships.¹⁷¹ Dr. Lopez provided Mr. Waltz with acupuncture
9 beads to use in his ears at the Shen Men, Liver, and Lung points.¹⁷² Dr. Lopez reported that Mr.
10 Waltz’s speech was normal, his appearance and behavior were appropriate, his thought process
11 was intact and coherent, and he had no memory problems.¹⁷³

12 **2.1.7 Scott Karpowicz, M.D. — Examining**

13 On February 13, 2015, Scott Karpowicz, M.D, a family-medical doctor, examined Mr. Waltz
14 and discussed his GA paperwork.¹⁷⁴ Dr. Karpowicz noted that Mr. Waltz applied for and was
15 denied SSI benefits.¹⁷⁵ Mr. Waltz reported that he was knocked unconscious at five years old and
16 that “things just don’t register.”¹⁷⁶ He felt like his brain worked “much more slowly than other
17
18
19

20 ¹⁶⁶ AR 540–41.

21 ¹⁶⁷ AR 540.

22 ¹⁶⁸ AR 541.

23 ¹⁶⁹ AR 538.

24 ¹⁷⁰ *Id.*

25 ¹⁷¹ *Id.*

26 ¹⁷² *Id.*

27 ¹⁷³ *Id.*

28 ¹⁷⁴ AR 583.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

1 people’s.”¹⁷⁷ Mr. Waltz reported difficulty with insomnia, anxiety, and “bipolar at times.”¹⁷⁸ When
2 he had a job, he got angry and had a difficult time with the schedule.¹⁷⁹ He stated that it was
3 difficult to find a job because he had “been on SSI for 9 years previously.”¹⁸⁰

4 Dr. Karpowicz opined that it was “[n]ot entirely clearly to [him] what the underlying diagnosis
5 is.”¹⁸¹ It was also not clear whether Mr. Waltz had “a severe enough illness that would make him
6 completely unfit for work.”¹⁸² To the contrary, Dr. Karpowicz opined that it “may in fact be
7 harmful for [Mr. Waltz] to continue to be out of the workforce.”¹⁸³ Dr. Karpowicz agreed to order
8 one month of GA benefits for Mr. Waltz “to give him time have additional psychiatric follow up
9 to determine firm diagnosis and appropriateness of disability.”¹⁸⁴

10 **2.1.8 Santa Rosa Memorial Hospital — Treating**

11 In March 2015, Mr. Waltz visited the emergency room for a rash on his face.¹⁸⁵ Mr. Waltz was
12 treated for a similar rash ten days prior.¹⁸⁶ Physician Assistant (“PA”) Isis A. Laland noted that
13 Mr. Waltz had cellulitis on his forearms, redness on his neck, face, and arms, and an itchy rash on
14 his chest and shoulders.¹⁸⁷ PA Laland also noted that Mr. Waltz lived in a homeless shelter (Sam
15 Jones) and bathed in a communal bathing facility.¹⁸⁸ PA Laland diagnosed Mr. Waltz with tinea

19 ¹⁷⁷ *Id.*

20 ¹⁷⁸ *Id.*

21 ¹⁷⁹ *Id.*

22 ¹⁸⁰ *Id.*

23 ¹⁸¹ *Id.*

24 ¹⁸² *Id.*

25 ¹⁸³ *Id.*

26 ¹⁸⁴ *Id.*

27 ¹⁸⁵ AR 534.

28 ¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

1 corporis and prescribed him cephalixin, hydrocortisone, hydroxyzine, and ketoconazole.¹⁸⁹ During
2 the exam, Mr. Waltz’s mood, affect, and speech were normal.¹⁹⁰

3 In November 2015, Mr. Waltz visited the emergency room for back pain.¹⁹¹ Mr. Waltz
4 reported that, the week prior, he fell off his bike as he rode it down a flight of stairs.¹⁹² Mr. Waltz
5 was ambulatory and had no incontinence.¹⁹³ He received a “back — lumbar” x-ray, which
6 indicated chronic back pain and degenerative disc disease at L5-S1.¹⁹⁴ Mr. Waltz had no fractures
7 in his back nor significant arthritis changes.¹⁹⁵ Rather, he likely had muscle spasms.¹⁹⁶

8 **2.1.9 Corinne Duncan, N.P. — Treating**

9 In January 2016, Corinne Duncan, a nurse practitioner (“NP”), saw Mr. Waltz for severe back
10 pain and a medication refill.¹⁹⁷ Mr. Waltz felt pain in his low- and mid-back after he lifted heavy
11 things while helping his friend move.¹⁹⁸ Mr. Waltz reported no substance abuse and that he had
12 been sober for three years.¹⁹⁹ NP Duncan noted that Mr. Waltz was pleasant, alert, and “clearly
13 uncomfortable with pain.”²⁰⁰ She prescribed Mr. Waltz gel for eczema and recommended that if
14 his back pain persisted for more than one week, he should return to the clinic for a physical
15 therapy referral.²⁰¹

18 ¹⁸⁹ AR 537.

19 ¹⁹⁰ AR 536.

20 ¹⁹¹ AR 506–10.

21 ¹⁹² AR 506.

22 ¹⁹³ *Id.*

23 ¹⁹⁴ AR 510.

24 ¹⁹⁵ *Id.*

25 ¹⁹⁶ *Id.*

26 ¹⁹⁷ AR 560.

27 ¹⁹⁸ *Id.*

28 ¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ AR 561.

1 **2.1.10 J. Schnitzler, D.O. — Non-Examining**²⁰²

2 On August 27, 2014, J. Schnitzler, D.O., a state agency psychological and psychiatric
3 consultant, opined as follows.²⁰³ No objective evidence supported Mr. Waltz’s alleged bipolar
4 disorder.²⁰⁴ Mr. Waltz was able to

5 maintain focus throughout [his] evaluation with no need for redirection. He was well
6 groomed and dressed appropriately for the season. Overall attitude was described
7 most appropriately as pleasant. Conversational flow was relatively normal. No
8 indications of psychotic process. Mood remained neutral throughout the evaluation
9 and affect was consistent.²⁰⁵

10 Mr. Waltz could perform simple “1–2 step tasks with limited public contact.”²⁰⁶

11 **2.1.11 D. Pong, M.D. — Non-Examining**²⁰⁷

12 In August 2014, D. Pong, M.D., a state agency medical consultant, opined that Mr. Waltz
13 could do (1) occasionally lift or carry fifty pounds and frequently lift and carry twenty-five
14 pounds, and (2) stand, walk, or sit for approximately six hours in an eight-hour workday.²⁰⁸ In
15 addition, Mr. Waltz was required to avoid concentrated exposure to hazards such as machinery
16 and heights.²⁰⁹

17 **2.2 Mr. Waltz’s Testimony**

18 At the May 26, 2016 hearing before the ALJ, Mr. Waltz testified as follows.²¹⁰ He lived at a
19 homeless shelter with approximately 120 others and got along with them “fairly well.”²¹¹ He had

20 ²⁰² In January 2015, L. Gottschalk, M.D., another non-examining state agency psychological and
21 psychiatric consultant, completed a mental residual functional capacity assessment that mirrored that
22 of Dr. Schnitzler. *See* AR 148–51.

23 ²⁰³ AR 110, 127.

24 ²⁰⁴ AR 110, 127.

25 ²⁰⁵ AR 110, 127.

26 ²⁰⁶ AR 110, 127.

27 ²⁰⁷ In January 2015, A. Pan, M.D., another non-examining state agency medical consultant, completed
28 a residual functional capacity assessment that mirrored that of Dr. Pong. *See* AR 147–48.

²⁰⁸ AR 129.

²⁰⁹ AR 130.

²¹⁰ *See* AR 61–93.

²¹¹ AR 62.

1 insomnia, so he slept during the day and went out at night, to AA (alcoholics anonymous) and NA
2 (narcotics anonymous) meetings.²¹² At the shelter, Mr. Waltz did laundry for the house — for
3 example, he did nine loads the night before the hearing.²¹³ To get around during the day or at
4 night, Mr. Waltz rode a bicycle or the bus.²¹⁴

5 In regard to his education, Mr. Waltz testified that he was “pretty much thrown out” of high
6 school in the 11th grade.²¹⁵ He believed his insomnia “had a lot to do with that.”²¹⁶ He never
7 received his GED.²¹⁷ He last worked in September 2011²¹⁸ at Target as a shelf-stocker but was
8 “fired” because the job was “too complicated” for him.²¹⁹ He “only worked there two months”
9 before he was fired.²²⁰ He “couldn’t understand exactly where everything went,” even when his
10 job was to restock the “easiest section . . . [he] just couldn’t do it.”²²¹ He was trained “numerous
11 times” but still could not handle the task.²²² He testified that he had sleep issues at that point.²²³

12 The ALJ pointed out that one of Mr. Waltz’s doctors recommended that Mr. Waltz do
13 vocational rehabilitation.²²⁴ Mr. Waltz testified that he had not tried vocational rehabilitation but,
14 if he did, he would “work someplace . . . like a Goodwill and [he] probably w[ould] look into
15
16

17 ²¹² *Id.*

18 ²¹³ *Id.*

19 ²¹⁴ AR 63.

20 ²¹⁵ AR 64.

21 ²¹⁶ *Id.*

22 ²¹⁷ AR 64–65.

23 ²¹⁸ It is not entirely clear from the record when Mr. Waltz began working at Target, or for how long.
24 He testified that he “believe[d]” he started in February 2011, *see* AR 87, but also testified that his last
25 job was at Target in September 2011, *see* AR 65. If Mr. Waltz worked at Target from February 2011
26 through September 2011, he clearly worked at that job for more than two months.

27 ²¹⁹ AR 65.

28 ²²⁰ AR 87.

²²¹ AR 77.

²²² AR 78.

²²³ *Id.*

²²⁴ AR 65.

1 it.”²²⁵ It was just “really far” from where he stayed at that time.²²⁶ He further testified that he used
2 to volunteer at Interlink, a mental-health service, which was also a “long distance” — about eleven
3 miles — from his current housing.²²⁷ He stated that he would “probably try to start going back [to
4 Interlink] too.”²²⁸ There, he used to water flowers, clean, and wash dishes.²²⁹

5 Mr. Waltz testified that he could not perform the above tasks at a job full-time.²³⁰ Instead, he
6 could do them when he had “the energy or like in small amounts” because he got “too easily
7 confused,” would “start misunderstanding stuff,” and only got “periodic sleep.”²³¹

8 Mr. Waltz previously worked full-time at the Casual Male store as a sales person.²³² His boss,
9 another AA member, was “very lenient” and gave him breaks because it took Mr. Waltz “a long
10 time to learn stuff.”²³³ It took him “a long time to learn what how to do what was supposed to be
11 done” at the store.²³⁴ Mr. Waltz used the cash register and rang up purchases for customers.²³⁵ He
12 testified that “[f]or the most part,” the cash register came up correct and that there “wasn’t ever an
13 issue” with him entering the wrong amounts or forgetting the amounts.²³⁶ He estimated that he
14 probably stood and walked “6 out of 10 hours” while he worked at the store but later testified that
15 he sat for “half the day.”²³⁷ Mr. Waltz testified that he probably lifted twenty pounds at the job.²³⁸

16
17
18 ²²⁵ AR 66.

19 ²²⁶ *Id.*

20 ²²⁷ *Id.*

21 ²²⁸ *Id.*

22 ²²⁹ *Id.*

23 ²³⁰ *Id.*

24 ²³¹ AR 66–67.

25 ²³² AR 67, 83.

26 ²³³ AR 67.

27 ²³⁴ AR 80.

28 ²³⁵ AR 67.

²³⁶ AR 80.

²³⁷ AR 68–69.

²³⁸ AR 69.

1 He called in sick “[n]ot very often . . . [m]aybe once or twice.”²³⁹ Mr. Waltz worked at the store
2 for “[a] little over” one year.²⁴⁰ He voluntarily quit that job because he “wasn’t going anywhere
3 with it” and “seemed like [he] was stuck in the same spot.”²⁴¹

4 Mr. Waltz testified that at age nineteen, he was involved in a major car accident where he was
5 thrown from a car as it rolled.²⁴² He was unconscious for three days, and he could not remember
6 his name or age following the accident.²⁴³

7 In 2005, Mr. Waltz worked part-time as a caregiver for his mother.²⁴⁴ He never looked into
8 working as a caregiver for others.²⁴⁵

9 Mr. Waltz testified that his insomnia, bipolar disorder, and depression prevented him from
10 working.²⁴⁶ He also stated that his “motivation is like real down” and that he “just can’t sleep.”²⁴⁷
11 Mr. Waltz took hydroxyzine, amitriptyline, and melatonin for insomnia and Elavil for both
12 insomnia and bipolar disorder.²⁴⁸ His sleep medication helped him fall asleep “sometimes,” but he
13 still slept “about five nights out of seven.”²⁴⁹ Mr. Waltz also testified that seeing his psychologist,
14 Dr. Lopez, “help[ed him] to relax some.”²⁵⁰ Mr. Waltz stated that Dr. Lopez gave him techniques
15 for sleep and “[p]robably for bipolar.”²⁵¹ Mr. Waltz testified that he also had anxiety “since [he]
16 was younger.”²⁵²

17
18 ²³⁹ AR 83.

19 ²⁴⁰ AR 80–81.

20 ²⁴¹ AR 82–83.

21 ²⁴² AR 78.

22 ²⁴³ *Id.*

23 ²⁴⁴ AR 69–70.

24 ²⁴⁵ AR 70.

25 ²⁴⁶ *Id.*

26 ²⁴⁷ *Id.*

27 ²⁴⁸ *Id.*

28 ²⁴⁹ AR 71–72.

²⁵⁰ AR 72–73.

²⁵¹ AR 73.

²⁵² *Id.*

1 Mr. Waltz testified that he had a history of alcohol and drug abuse but had been sober since
2 January 9, 2014.²⁵³ He was sober between March 2007 and February 2011²⁵⁴ and not sober from
3 February 2011 to January 9, 2014.²⁵⁵ He testified that he was clean when he worked at Target in
4 2011.²⁵⁶ He tried heroin and meth “a little bit . . . occasionally, but [he] never mainlined with
5 drugs, [he] never sho[t] a needle in [his] arm” to get high.²⁵⁷ He tried smoking crystal meth “a few
6 times” but “didn’t do a whole lot” for him, and he did not “much care for it” because he “already
7 [had] sleep issues.”²⁵⁸ Alcohol helped him “pass out,” but he still struggled with sleep when he
8 drank.²⁵⁹ Marijuana helped him sleep; he used to smoke a “couple joints” of marijuana per
9 week.²⁶⁰

10 In regard to Mr. Waltz’s claimed blot clots and tendonitis, he testified that “both of [his] legs
11 are okay [He] can’t walk too far because it might start to ache a little bit and they can get a
12 little sore sometimes when [] riding [his] bicycle, but . . . they’ve healed very well.”²⁶¹ He could
13 walk “probably half a mile” and rode his bicycle “three or four miles . . . maybe five.”²⁶² He
14 attended “about four or five” AA meetings per week, and he sometimes hung out with friends.²⁶³
15 He also testified that he had never undergone therapy to improve his cognitive ability (*i.e.*,
16 memory and concentration).²⁶⁴ Furthermore, Mr. Waltz believed that he had a learning disability,
17

18
19 ²⁵³ *Id.*
20 ²⁵⁴ Mr. Waltz could not recall whether he began using drugs and alcohol again in February 2011 or
21 April 2011. AR 84–85.
22 ²⁵⁵ AR 84–85.
23 ²⁵⁶ AR 74.
24 ²⁵⁷ *Id.*
25 ²⁵⁸ *Id.*
26 ²⁵⁹ AR 85.
27 ²⁶⁰ AR 85–86.
28 ²⁶¹ AR 75.
²⁶² *Id.*
²⁶³ AR 76.
²⁶⁴ *Id.*

1 although he was never so diagnosed.²⁶⁵

2 **2.3 Vocational Expert Testimony**

3 Robert Cottle, a vocational expert (“VE”), also testified at the May 26, 2016 hearing.²⁶⁶ The
4 ALJ posed the following hypothetical:

5 [A] hypothetical individual [of] the claimant’s age and education and with the past
6 jobs [of sales representative, general merchandise; DOT 279-357-014; SVP 4; light
7 strength] [T]his individual is limited to medium work as defined in the
8 regulations except frequent balance, stoop, kneel, crouch, crawl, and clime ramps
9 and stairs. So those are all frequent. No climbing ropes, ladders, or scaffolds; no
10 exposure to high-exposed places or moving mechanical parts; and can understand,
11 remember, and carry out simple instructions and make simple work-related
12 decisions, can tolerate occasional interaction with the public.²⁶⁷

13 VE Cottle testified that such a hypothetical individual could not perform any of Mr.
14 Waltz’s past jobs as actually performed or generally performed in the national economy.²⁶⁸

15 He further testified that such a hypothetical individual could perform other kinds of
16 work.²⁶⁹ Specifically, VE Cottle testified that such an individual could work as a laundry
17 worker (DOT 361.685-018; SVP 2; medium strength; nationally, 199,300), dryer attendant
18 (DOT 581.686-018; SVP 1; medium strength; 106,200) or box bender (DOT 641.687-010;
19 SVP 1; medium strength; nationally, 206,600).²⁷⁰

20 VE Cottle then considered a second hypothetical: the individual in the first
21 hypothetical was limited to frequent interaction with coworkers and occasional interaction

22
23 ²⁶⁵ AR 81.
24 ²⁶⁶ AR 88–97.
25 ²⁶⁷ AR 89–90.
26 ²⁶⁸ AR 90.
27 ²⁶⁹ *Id.*
28 ²⁷⁰ AR 90–92. VE Cottle initially testified that such an individual could also work as a linen room attendant, but then eliminated that possibility because it was “not [] simple” and “some judgment [] involved” in that job. AR 91–92.

1 with supervisors.²⁷¹ VE Cottle indicated that the jobs of laundry worker, dryer attendant,
2 and box bender would still apply.²⁷²

3 VE Cottle considered a third hypothetical: the individual in the first hypothetical could
4 perform routine tasks at a consistent pace but not at a production rate pace, where each task
5 must be performed according to a strict deadline.²⁷³ He testified that such an individual
6 could work as a laundry worker, dryer attendant, or frame stripper (DOT 559.687-046;
7 SVP 1; medium strength; nationally, 426,700).²⁷⁴ That individual could not work as a box
8 bender.²⁷⁵

9 VE Cottle testified that if the third hypothetical individual were off task for fifteen to
10 twenty percent of the day, such an individual would not be able to perform the jobs of
11 laundry worker, dryer attendant, or frame stripper.²⁷⁶ That individual could perform those
12 jobs, however, even if off task for five percent of the day.²⁷⁷

13 He further testified that if an individual needed to miss more than three days per month of
14 work, such an individual would not be able to perform any of the above-mentioned jobs.²⁷⁸
15 Likewise, if an individual “needed additional instructions well beyond that of a normal employee”
16 for one-third of the time, such an individual would not be able to perform any of those jobs.²⁷⁹
17 Finally, if an individual occasionally “was not able to get along with coworkers and supervisors
18 one-third of the workday,” such an individual could not perform any of those jobs.²⁸⁰

19
20
21
22
23
24
25
26
27
28

²⁷¹ AR 92.

²⁷² *Id.*

²⁷³ *Id.*

²⁷⁴ AR 92–93.

²⁷⁵ AR 92.

²⁷⁶ AR 93.

²⁷⁷ *Id.*

²⁷⁸ AR 94.

²⁷⁹ AR 94–95.

²⁸⁰ AR 95.

1 **2.4 Administrative Findings**

2 The ALJ followed the five-step sequential evaluation process to determine whether Mr. Waltz
3 was disabled and concluded that he was not.²⁸¹

4 At step one, the ALJ found that Mr. Waltz had not engaged in substantial gainful activity since
5 September 15, 2011.²⁸²

6 At step two, the ALJ found that Mr. Waltz had the following severe impairments: chronic
7 insomnia; degenerative-disc disease; hypertension; affective disorder; personality disorder; anxiety
8 and sprains and strains.²⁸³ The ALJ found that Mr. Waltz had several non-severe impairments,
9 including but not limited to deep-vein thrombosis, tendonitis, hypothyroidism, chronic skin
10 conditions, and a back sprain.²⁸⁴ The ALJ also found that Mr. Waltz’s alleged learning disability
11 was not a medically determinable impairment.²⁸⁵

12 At step three, the ALJ found that Mr. Waltz did not have an impairment or combination of
13 impairments that met or medically equaled the severity of one of the listed impairments.²⁸⁶ In
14 addition, no treating or examining physician had mentioned findings equivalent in severity to the
15 criteria of any listed impairment.²⁸⁷ Specifically, the ALJ found that, with respect to Mr. Waltz’s
16 hypertension (which was evaluated by reference to specific body systems), there was no evidence
17 in the record of a specific body system so affected as to meet a listing.²⁸⁸ With respect to Mr.
18 Waltz’s degenerative-disc disease, the ALJ found that it did not meet Listing 1.04 (disorders of the

19
20
21
22
23
24
25
26
27
28

²⁸¹ AR 23–39.

²⁸² AR 24.

²⁸³ AR 24–25.

²⁸⁴ AR 25.

²⁸⁵ *Id.*

²⁸⁶ AR 25–28.

²⁸⁷ AR 25.

²⁸⁸ AR 25–26.

1 spine) because the record did not demonstrate any compromise of a nerve root or the spinal cord
2 with any additional findings.²⁸⁹

3 The ALJ also found that Mr. Waltz’s mental impairments, considered singly and in
4 combination, did not meet or medically equal the criteria of any of the following listings: 12.04
5 (affective disorder); 12.06 (anxiety-related disorders); 12.08 (personality disorders); and 12.09
6 (substance addition disorders).²⁹⁰ In making such a determination, the ALJ considered whether
7 Mr. Waltz’s mental impairments resulted in at least two of the following: (1) marked restriction of
8 activities of daily living; (2) marked difficulties in maintaining social functioning; (3) marked
9 difficulties in maintaining concentration, persistence, or pace; or (4) repeated episodes of
10 decompensation, each of extended duration.²⁹¹

11 With respect to (1), the ALJ found that Mr. Waltz had only mild restrictions in activities of
12 daily living.²⁹² Mr. Waltz could, for example, prepare his own meals and cook at his shelter, use
13 public transportation independently, walk, ride his bicycle, do laundry, frequently volunteer at
14 Interlink doing gardening and cleaning, shop in stores, and remember and attend appointments.²⁹³

15 With respect to (2), the ALJ found that Mr. Waltz had moderate difficulties in social
16 functioning.²⁹⁴ Specifically, on the one hand, Mr. Waltz sometimes had conflict with others
17 (which resulted in losing a job), had issues with crowds, and did not socialize often with friends
18 due to feelings of anxiety or depression.²⁹⁵ On the other hand, Mr. Waltz got along well with
19
20
21
22

23 ²⁸⁹ AR 26.

24 ²⁹⁰ *Id.*

25 ²⁹¹ *Id.*

26 ²⁹² *Id.*

27 ²⁹³ *Id.*

28 ²⁹⁴ *Id.*

²⁹⁵ *Id.*

1 authority figures and felt he had no problem getting along with family or friends.²⁹⁶ He also was
2 involved in a satisfying relationship with an individual at his homeless shelter.²⁹⁷

3 With respect to (3), the ALJ found that Mr. Waltz had moderate difficulties with
4 “concentration, persistence, or pace.”²⁹⁸ On the one hand, Mr. Waltz could remember
5 appointments, read regularly (and well), and processed spoken instructions (better than written
6 instructions).²⁹⁹ On the other hand, he felt that his mind drifted after only ten minutes, he did not
7 handle stress or changes in his routine well, and his short-term memory was at times “mildly
8 decreased.”³⁰⁰ With respect to (4), Mr. Waltz experienced no episodes of decompensation.³⁰¹

9 Overall, the ALJ found that there was insufficient objective medical evidence to establish that
10 Mr. Waltz had a disabling affective disorder, anxiety-related disorder, or substance-abuse
11 disorder.³⁰²

12 Before considering the fourth step, the ALJ determined that Mr. Waltz had the residual-
13 functional capacity (“RFC”) to perform medium work, but with the following limitations: able to
14 frequently balance, stoop, kneel, crouch, crawl, and climb; unable to climb ladders, ropes, or
15 scaffolds; unable to have any exposure to high, exposed places or moving mechanical parts; able
16 to understand, remember, and carry out only simple instructions and make simple work-related
17 decisions; able to tolerate only occasional interaction with the public; able to perform routine tasks
18 at a consistent pace, but not a production rate pace where each task must be performed within a
19 strict time deadline; and he would be off task for five percent of the workday.³⁰³

22 ²⁹⁶ *Id.*

23 ²⁹⁷ *Id.*

24 ²⁹⁸ AR 26–27.

25 ²⁹⁹ AR 26.

26 ³⁰⁰ AR 26–27.

27 ³⁰¹ AR 27.

28 ³⁰² AR 27–28.

³⁰³ AR 28.

1 The ALJ further provided:

2 [Mr. Waltz's] generative disc disease and fatigue due to insomnia, plus hypertension
3 (at times uncontrolled but not apparently controlled) and periodic sprains and strains
4 justify a limitation to work at no more than a medium level of exertion, with
5 corresponding postural limitations. [His] insomnia and side effects from medication
6 make appropriate a prohibition on exposure to hazards. [His] anxiety and personality
7 disorders result in a significant restriction on his contact with the public. [His]
8 affective disorder makes necessary a limitation on the complexity of instructions he
9 can process and perform and the pace at which he can do such things. Finally, [his]
10 combined physical and mental impairments call for an allowance for the claimant to
11 be off-task a small but significant portion of the workday (5%).³⁰⁴

12 At step four, the ALJ concluded that, because Mr. Waltz's past job as a sales representative
13 exceeded his ability to perform work involving no more than simple instructions and only
14 occasional interaction with the public, Mr. Waltz was unable to perform his past relevant work.³⁰⁵

15 At step five, the ALJ determined that, given Mr. Waltz's age, education, work experience and
16 RFC, and based on the VE's testimony, "significant numbers" of jobs existed in the national
17 economy that Mr. Waltz could perform.³⁰⁶ The ALJ thus concluded that Mr. Waltz was not
18 disabled.³⁰⁷

19 STANDARD OF REVIEW

20 Under 42 U.S.C. § 405(g), district courts have jurisdiction to review any final decision of the
21 Commissioner if the claimant initiates a suit within sixty days of the decision. A court may set
22 aside the Commissioner's denial of benefits only if the ALJ's "findings are based on legal error or
23 are not supported by substantial evidence in the record as a whole." *Vasquez v. Astrue*, 572 F.3d
24 586, 591 (9th Cir. 2009) (internal citation and quotation marks omitted); 42 U.S.C.
25 § 405(g). "Substantial evidence means more than a mere scintilla but less than a preponderance; it
26 is such relevant evidence as a reasonable mind might accept as adequate to support a
27 conclusion." *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). The reviewing court should

28 _____
³⁰⁴ AR 37.

³⁰⁵ *Id.*

³⁰⁶ AR 38.

³⁰⁷ AR 38–39. Because the ALJ found that Mr. Waltz was not disabled — even considering his "severe substance abuse impairment" — the ALJ did not consider the issue of "materiality" of drug and alcohol abuse. *See* 20 C.F.R. § 404.1535; 20 C.F.R. § 416.935.

1 uphold “such inferences and conclusions as the [Commissioner] may reasonably draw from the
2 evidence.” *Mark v. Celebrezze*, 348 F.2d 289, 293 (9th Cir. 1965). If the evidence in the
3 administrative record supports the ALJ’s decision and a different outcome, the court must defer to
4 the ALJ’s decision and may not substitute its own decision. *Tackett v. Apfel*, 180 F.3d 1094, 1097–
5 98 (9th Cir. 1999). “Finally, [a court] may not reverse an ALJ’s decision on account of an error
6 that is harmless.” *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).

7 8 GOVERNING LAW

9 A claimant is considered disabled if (1) he or she suffers from a “medically determinable
10 physical or mental impairment which can be expected to result in death or which has lasted or can
11 be expected to last for a continuous period of not less than twelve months,” and (2) the
12 “impairment or impairments are of such severity that he or she is not only unable to do his
13 previous work but cannot, considering his age, education, and work experience, engage in any
14 other kind of substantial gainful work which exists in the national economy” 42 U.S.C. §
15 1382c(a)(3)(A) & (B). The five-step analysis for determining whether a claimant is disabled
16 within the meaning of the Social Security Act is as follows. *Tackett*, 180 F.3d at 1098 (citing 20
17 C.F.R. § 404.1520).

18 **Step One.** Is the claimant presently working in a substantially gainful activity? If so,
19 then the claimant is “not disabled” and is not entitled to benefits. If the claimant is
20 not working in a substantially gainful activity, then the claimant’s case cannot be
21 resolved at step one, and the evaluation proceeds to step two. *See* 20 C.F.R.
22 § 404.1520(a)(4)(i).

23 **Step Two.** Is the claimant’s impairment (or combination of impairments) severe? If
24 not, the claimant is not disabled. If so, the evaluation proceeds to step three. *See* 20
25 C.F.R. § 404.1520(a)(4)(ii).

26 **Step Three.** Does the impairment “meet or equal” one of the listed specified
27 impairments described in the regulations? If so, the claimant is disabled and is
28 entitled to benefits. If the claimant’s impairment does not meet or equal one of
the impairments listed in the regulations, then the case cannot be resolved at step
three, and the evaluation proceeds to step four. *See* 20 C.F.R. § 404.1520(a)(4)(iii).

Step Four. Considering the claimant’s RFC, is the claimant able to do any work that
he or she has done in the past? If so, then the claimant is not disabled and is not
entitled to benefits. If the claimant cannot do any work he or she did in the past, then

1 the case cannot be resolved at step four, and the case proceeds to the fifth and final
2 step. *See* 20 C.F.R. § 404.1520(a)(4)(iv).

3 **Step Five.** Considering the claimant’s RFC, age, education, and work experience, is
4 the claimant able to “make an adjustment to other work?” If not, then the claimant is
5 disabled and entitled to benefits. *See* 20 C.F.R. § 404.1520(a)(4)(v). If the claimant
6 is able to do other work, the Commissioner must establish that there are a significant
7 number of jobs in the national economy that the claimant can do. There are two ways
8 for the Commissioner to show other jobs in significant numbers in the national
9 economy: (1) by the testimony of a vocational expert or (2) by reference to the
10 Medical-Vocational Guidelines at 20 C.F.R., part 404, subpart P, app. 2.

11 For steps one through four, the burden of proof is on the claimant. At step five, the
12 burden shifts to the Commissioner. *Gonzales v. Sec’y of Health & Human Servs.*, 784 F.2d 1417,
13 1419 (9th Cir. 1986).

14 ANALYSIS

15 Mr. Waltz contends that the ALJ erred by discrediting his testimony.³⁰⁸ Specifically, Mr.
16 Waltz argues that the ALJ erred by finding that his testimony was inconsistent with (1) objective
17 medical evidence and treatment sought,³⁰⁹ and (2) his work history.³¹⁰ The court disagrees.

18 In assessing a claimant’s credibility, an ALJ must make two determinations. *Molina*, 674 F.3d
19 at 1112. “First, the ALJ must determine whether there is ‘objective medical evidence of an
20 underlying impairment which could reasonably be expected to produce the pain or other
21 symptoms alleged.’” *Id.* (quoting *Ligenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007)).
22 Second, if the claimant produces that evidence, and “there is no evidence of malingering,” the ALJ
23 must provide “specific, clear and convincing reasons” for rejecting the claimant’s testimony
24 regarding the severity of the claimant’s symptoms. *Id.* (internal quotation marks and citations
25 omitted). “At the same time, the ALJ is not ‘required to believe every allegation of disabling pain,
26 or else disability benefits would be available for the asking, a result plainly contrary to 42 U.S.C. §
27 423(d)(5)(A).’” *Id.* (quoting *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989)). “Factors that an
28 ALJ may consider in weighing a claimant’s credibility include reputation for truthfulness,

³⁰⁸ Motion for Summary Judgment – ECF No. 26 at 5, 7–10.

³⁰⁹ *Id.* at 7–9.

³¹⁰ *Id.* at 9–10.

1 inconsistencies in testimony or between testimony and conduct, daily activities, and unexplained,
2 or inadequately explained, failure to seek treatment or follow a prescribed course of treatment.”
3 *Orn v. Astrue*, 495 F.3d 625, 636 (9th Cir. 2007) (internal quotation marks omitted). “[T]he ALJ
4 must identify what testimony is not credible and what evidence undermines the claimant’s
5 complaints.” *Burrell v. Colvin*, 775 F.3d 1133, 1138 (9th Cir. 2014) (citing *Lester v. Chater*, 81
6 F.3d 821, 834 (9th Cir. 2014)); *see, e.g., Morris v. Colvin*, No. 16-CV-0674-JSC, 2016 WL
7 7369300, at *12 (N.D. Cal. Dec. 20, 2016).

8 Here, the ALJ gave specific, clear and convincing reasons for discounting Mr. Waltz’s
9 testimony. Although Mr. Waltz discusses only two, the ALJ gave five reasons for discounting Mr.
10 Waltz’s testimony. The court considers each in turn.

11 First, as Mr. Waltz points out, the ALJ found that Mr. Waltz’s treatment history undercut the
12 accuracy of his testimony.³¹¹ *See* 20 C.F.R. § 404.1529(c)(3)(iv) (identifying nature of treatment
13 as factor to consider when assessing subjective allegations). Specifically, the ALJ found that Mr.
14 Waltz’s allegations about the severity of his impairments were “inconsistent with his history of
15 seeking minimal — or, at best, highly conservative — treatment.”³¹² *See Johnson v. Shalala*, 60
16 F.3d 1428, 1434 (9th Cir. 1995) (“conservative treatment” suggested “lower lever of both pain and
17 functional limitation”). For example, although Mr. Waltz claimed disabling mental impairments,
18 including bipolar disorder, depression, and anxiety, he did not regularly receive psychotherapy or
19 take psychotropic medication.³¹³ *See Ostenbrock v. Apfel*, 240 F.3d 1157, 1166 (9th Cir. 2001)
20 (finding ALJ properly rejected claimant’s subjective complaints where he did not use medication
21 commonly prescribed for alleged symptoms).

22 Moreover, regarding Mr. Waltz’s psychological impairments, the ALJ found that

23 his comments to providers suggest he sought treatment for the primary purpose of
24 obtaining benefits Vocational rehabilitation was suggested for the claimant, as

25
26 ³¹¹ *See* AR 33–34.

27 ³¹² AR 33.

28 ³¹³ AR 32, 429.

1 an alternative to his expressed desire to receive disability benefits, and remaining out
2 of the workforce was considered potentially damaging to [his] mental health.³¹⁴
3 *See* 20 C.F.R. § 404.1529(c)(3)(vii)(4). On February 13, 2015, Mr. Waltz saw Dr. Karpowicz, in
4 part, for “GA” (general assistance benefits).³¹⁵ As the ALJ pointed out, Dr. Karpowicz stated that
5 it was “not entirely clear” what Mr. Waltz’s underlying diagnosis was for his disabling
6 symptoms.³¹⁶ He further noted that it was not clear that Mr. Waltz had a “severe enough illness
7 that would make him completely unfit for work” and that it “may in fact be harmful for him to
8 continue to be out of the workforce.”³¹⁷ Although that opinion is reserved for the Commissioner, it
9 is “indicative of the objective severity of [Mr. Waltz]’s impairment.”³¹⁸

10 Second, as Mr. Waltz discusses, the ALJ found Mr. Waltz’s work history to be inconsistent
11 with the alleged severity of his symptoms.³¹⁹ The ALJ observed that even though Mr. Waltz
12 claimed to have difficulty getting along with coworkers and that he lost a job due to his alleged
13 anger issues — the record did not demonstrate social issues in Mr. Waltz’s past employment or
14 volunteer work.³²⁰ The ALJ noted that Mr. Waltz lived in a house with over 100 others and had no
15 problem getting along with them.³²¹ The ALJ further noted that although Mr. Waltz was fired from
16 his last job, he quit his previous job because he felt it “wasn’t going anywhere.”³²² *See Drouin v.*
17 *Sullivan*, 966 F.2d 1255, 1256 (9th Cir. 1992) (finding ALJ properly rejected the claimant’s pain
18 testimony because the claimant was laid off from work for reasons unrelated to her pain). The
19 ALJ’s consideration of Mr. Waltz’s work history was proper and supported by substantial
20 evidence.

21 ³¹⁴ AR 32.

22 ³¹⁵ AR 583.

23 ³¹⁶ AR 36, 583.

24 ³¹⁷ AR 36; *see also* AR 583.

25 ³¹⁸ AR 36.

26 ³¹⁹ AR 34.

27 ³²⁰ AR 36.

28 ³²¹ *Id.*

³²² AR 34; *see also* AR 82–83.

1 Third, the ALJ found that Mr. Waltz’s activities of daily living demonstrated a level of
 2 functioning beyond his alleged level of functioning.³²³ See 20 C.F.R. § 404.1529(c)(3)(vii)(4); see
 3 also *Orn*, 495 F.3d at 636 (“[I]nconsistencies . . . between [a claimant’s] testimony and [his]
 4 conduct [or] daily activities” is a legitimate factor “in weighing a claimant’s credibility.”). For
 5 example, Mr. Waltz claimed disability in part based on anger issues and impatience with others.³²⁴
 6 He stated that he had difficulty being around others and that he was once fired from a job due to
 7 his anger issues.³²⁵ But, as the ALJ noted, Mr. Waltz lived in a shelter with over 100
 8 individuals.³²⁶ He had no altercations with his cohabitants, was involved in a relationship with
 9 someone from his shelter, and got along well with authority figures, family, and friends.³²⁷ The
 10 ALJ further noted that Mr. Waltz rode public transportation independently, volunteered, and
 11 attended appointments.³²⁸

12 Fourth, the ALJ found that the medical evidence undermined Mr. Waltz’s claims of disabling
 13 limitations and supported his RFC for work involving simple instructions, simple work-related
 14 decision-making, limited social contact, flexible deadlines, and the ability to be off task for five
 15 percent of the workday.³²⁹ Mr. Waltz failed to address the breadth of normal examination
 16 findings³³⁰ or explain how the ALJ erred in weighing the medical evidence with respect to his
 17 RFC. The ALJ concluded that the medical evidence did not support Mr. Waltz’s allegations.

19 ³²³ AR 26, 29, 33; see also AR 61–62, 315, 317–19, 320, 538.

20 ³²⁴ AR 33, 318, 320.

21 ³²⁵ AR 26, 318, 320.

22 ³²⁶ AR 36.

23 ³²⁷ AR 26, 33, 61–62.

24 ³²⁸ AR 26; see also AR 315, 317–19.

25 ³²⁹ AR 37.

26 ³³⁰ See, e.g., AR 424–26 (where Dr. Kalman noted that Mr. Waltz was pleasant and cooperative, he
 27 spoke at an average rate and volume, and his eye contact was good; Mr. Waltz could relate to
 28 supervisors, co-workers, and peers, and he could withstand the stress and pressures associated with
 daily work); AR 583 (where Dr. Karpowicz opined that it was “not clear” that Mr. Waltz had “a severe
 enough illness that would make him completely unfit for work”); AR 430 (where Dr. Larson reported
 that Mr. Waltz was able to maintain focus throughout the evaluation with no need for redirection, gave
 good eye contact, had a pleasant attitude, and no “loose associations or confusion” were indicated);

1 Fifth, the ALJ found that Mr. Waltz’s conflicting accounts of his cannabis and alcohol use
2 undercut the accuracy of his allegations.³³¹ See 20 C.F.R. § 404.1529(c)(4) (“We will consider
3 whether there are any inconsistencies in the evidence and the extent to which there are any
4 conflicts between your statements and the rest of the evidence.”); *Thomas v. Barnhart*, 278 F.3d
5 948, 959 (9th Cir. 2002) (rejecting claimant’s statements where “the ALJ found that [the claimant]
6 had not ‘been a reliable historian, presenting conflicting information about her drug and alcohol
7 usage’”); *Rusten v. Comm’r of Soc. Sec.*, 468 F. App’x 717, 719 (9th Cir. 2012) (“Inconsistent or
8 dishonest statements about drug use can be used to infer a lack of veracity in the claimant’s other
9 assertions.”) (citing *Thomas*, 278 F.3d at 959). For example, as the ALJ noted, Mr. Waltz testified
10 that he had not used cannabis since January 9, 2014,³³² but the record shows that he reported using
11 cannabis through at least March 2015.³³³ The ALJ properly found that Mr. Waltz’s inconsistent
12 statements undermined his claims.

13 The court concludes that the ALJ gave specific, clear and convincing reasons for discounting
14 Mr. Waltz’s testimony.

15 **CONCLUSION**

16 The court denies Mr. Waltz’s motion for summary judgment and grants the Commissioner’s
17 cross-motion for summary judgment.

18 **IT IS SO ORDERED.**

19 Dated: November 13, 2018



20
21 LAUREL BEELER
22 United States Magistrate Judge
23
24

25 _____
26 AR 485 (where Dr. Gerson noted that Mr. Waltz was able to relate to him, follow instructions without
27 difficulty, and was “not unstable”).

28 ³³¹ AR 29, 31–32, 34, 73, 534, 589.

³³² AR 34, 73.

³³³ On November 7, 2014, Mr. Waltz told Dr. Kozart that he still used cannabis. AR 589; *see also* AR 535.