UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

DONALD R. CRAYTON,

Plaintiff,

v.

NANCY A. BERRYHILL,

Defendant.

Case No. 16-cv-04454-PJH

**ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT; GRANTING DEFENDANT'S CROSS MOTION FOR SUMMARY JUDGMENT**

Re: Dkt. Nos. 12, 18

Plaintiff Donald R. Crayton ("Crayton") seeks judicial review of the Commissioner of Social Security's ("Commissioner") decision denying his claim for disability benefits pursuant to 42 U.S.C. § 405(g). This action is before the court on the parties' cross-motions for summary judgment. Having read the parties' papers and the administrative record, and having carefully considered their arguments and relevant legal authority, the court DENIES Crayton's motion for summary judgment, GRANTS the Commissioner's cross-motion for summary judgment, and AFFIRMS the Commissioner's final decision to deny benefits.

## BACKGROUND

Crayton was 42 years-old when he applied for Social Security Disability Insurance ("SSDI") benefits on September 21, 2012. Administrative Record ("AR") 191. Crayton initially alleged a disability date from June 1, 2001, which he later amended to the September 21, 2012 application date on advice of counsel. AR 39, 84. His application was denied on initial review and again upon reconsideration. AR 39.

A hearing was conducted at Crayton's request by Administrative Law Judge Maxine R. Benmour (the "ALJ") on September 25, 2014. AR 39. Crayton appeared and testified at the hearing, represented by counsel Jeffrey Simpson, who requested to

amend the alleged onset of disability date at the hearing. AR 39. Vocational Expert Mary R. Ciddio ("VE") also testified as an impartial expert at the hearing and was questioned by both the ALJ and Simpson. AR 80–82.

In a written decision dated January 29, 2015, the ALJ concluded Crayton has not been under a disability within the meaning of the Social Security Act since the September 21, 2012 application and onset date. AR 52. Crayton requested a review by the Appeals Council, which was denied in a notice dated June 8, 2016, making the ALJ's decision the final decision of the Commissioner. AR 1.

Crayton is a high school graduate but has engaged in no work that could be considered substantial gainful activity. AR 62. Crayton indicates that he was in special education in school as he had to be "one-on-one taught." AR 74. Crayton was terminated from his last documented job in 2004 following an altercation with another employee and testified that he has lost most of his positions for similar behavior. AR 63–64. In April and May of 2014, Crayton reported to physicians at the ER and at a follow-up visit that he was working as a furniture mover and experiencing shoulder pain. AR 477, 483. In May of 2014, Crayton told his psychologist, Dr. Maria Alvarez, that he was the primary caregiver for his infant son and then one-year-old granddaughter. AR 481.

In 2012, Crayton was diagnosed as bipolar by doctors at the California Department of Corrections and was treated with medication. AR 309, 312. Following his release from prison in 2013, Crayton has been in the care of both a psychologist and a psychiatrist who diagnosed him with panic disorder and Posttraumatic Stress Disorder. AR 64, 597. Crayton indicates that he prefers to stay home, in his room, and feels anxious about going outside. AR 64–65.

Crayton suffers from arthritis in both knees and his left shoulder. AR 68, 70. An MRI performed on March 28, 2014 showed mild degeneration of the left shoulder that is non-surgical. AR 483, 578. He also has diabetes, sleep apnea, and morbid obesity. AR 428. Additionally, Crayton alleges disability due to a history of Hodgkin's lymphoma in his adolescence, but has not identified any functional limitations caused by it. AR 212.

Crayton also reports nerve damage resulting in unsteady hands, but there is no supporting medical evidence of this in the record. AR 212.

Crayton takes medication for diabetes (Glimepiride and Metformin), but is not insulin dependent. AR 591, 597–98. He also takes pain medications (Gabapentin, Oxycodone and Methadone), medication for anxiety (Alprazolam), and is prescribed Lamotrigine for bipolar disorder. AR 597–98.

**STATUTORY AND REGULATORY FRAMEWORK**

The Social Security Act ("the Act") provides for the payment of disability insurance benefits to people who have contributed to the social security system and who suffer from a physical or mental disability. See 42 U.S.C. § 423(a)(1). To evaluate whether a claimant is disabled within the meaning of the Act, the ALJ is required to use a five-step analysis. See 20 C.F.R. § 416.920(a). The ALJ may end the analysis at any step when it is determined that the claimant is or is not disabled. Pitzer v. Sullivan, 908 F.2d 502, 504 (9th Cir. 1990).

At step one, the ALJ determines whether the claimant has engaged in any "substantial gainful activity," which would automatically preclude the claimant receiving disability benefits. See 20 C.F.R. § 416.920(b). If not, at the second step, the ALJ must consider whether the claimant suffers from a severe impairment which "significantly limits [the claimant's] physical or mental ability to do basic work activities." See 20 C.F.R. § 416.920(c). The third step requires the ALJ to compare the claimant's impairment(s) to a listing of impairments in the regulations. If the claimant's impairment or combination of impairments meets or equals the severity of any medical condition contained in the listing, the claimant is presumed disabled and is awarded benefits. See 20 C.F.R. § 416.920(d).

If the claimant's condition does not meet or equal a listing, the ALJ must proceed to the fourth step to consider whether the claimant has sufficient residual functional capacity ("RFC") to perform his past work despite the limitations caused by the impairment. See 20 C.F.R. § 416.920(e)–(f). An individual's RFC is what he can still do

in a work setting despite his physical and mental limitations. 20 C.F.R. § 404.1545. In determining the RFC, the ALJ must consider all of the claimant's impairments, including those that are not severe, taking into account all relevant medical and other evidence. 20 C.F.R. §§ 416.920(e), 416.945. If the claimant cannot perform his past work, the Commissioner is required to show, at step five, that the claimant can perform other work that exists in significant numbers in the national economy, taking into consideration the claimant's RFC, age, education, and work experience. See 20 C.F.R. § 404.1520(g).

Overall, in steps one through four, the claimant has the burden to demonstrate a severe impairment and an inability to engage in his previous occupation. Andrews v. Shalala, 53 F.3d 1035, 1040 (9th Cir. 1995). If the analysis proceeds to step five, the burden shifts to the Commissioner to demonstrate that the claimant can perform other work. Id.

**THE ALJ's FINDINGS**

The ALJ determined Crayton has not been under a disability within the meaning of the Act since the September 21, 2012 application date. AR 39. Beginning at step one, Crayton had no reported earnings since his application date of September 21, 2012. Although Crayton told his doctor that he was working as a furniture mover in April and May of 2014, the ALJ did not consider this to be at substantial gainful activity levels. AR 41. At step two, the ALJ evaluated Crayton's impairments and determined that his diabetes, degenerative joint disease in both knees and left shoulder, sleep apnea, morbid obesity, and bipolar disorder were severe impairments that more than minimally limited his ability to perform basic work tasks. AR 42. The ALJ found that there was not severe impairment from Crayton's history of Hodgkin's lymphoma or self-reported nerve damage in his hands which was not supported by medical evidence or testing. AR 42.

At step three, the ALJ determined that Crayton did not have an impairment or combination of impairments that met or medically equaled one of the listed impairments in 20 C.F.R., Part 404, Subpart P, Appendix 1. AR 42. This was determined by comparing Crayton's impairments to the relevant listings: listing 1.02 (major dysfunction

of a joint(s) due to any cause); listing 3.10 (sleep-related breathing disorders, including listing 3.02 sleep apnea); section 9.00 (endocrine disorders); listing 12.02 (neurocognitive disorders); and listing 12.04 (depressive, bipolar, and related disorders). AR 42–43. The ALJ found that Crayton's impairments do not meet the standards set out in the listings. AR 43. At all times relevant to the decision, Crayton had a Body Mass Index (BMI) in excess of 30, which is considered to be obese. AR 43. However, the ALJ determined that neither the obesity alone, nor in combination with the other impairments, is of the severity to meet or equal the criteria of any impairment listed in Appendix 1. AR 43. Central to the ALJ's finding that Crayton's level of mental impairment is a mild restriction, and not a marked limitation, was evidence that he attended to his personal hygiene and grooming, acted as primary caretaker for his then-infant child and one-year-old grandchild, and has experienced no episodes of decompensation of an extended duration. AR 43–45. The ALJ determined that Crayton is moderately limited in social functioning due to outbursts of anger and panic attacks, but his treatment records do not reflect the severe isolation that Crayton describes. AR 44.

Proceeding to step four, the ALJ determined that Crayton has the RFC to perform sedentary work as defined in 20 C.F.R. § 416.967(a), including the ability to lift and/or carry ten pounds, sit for six hours in an eight-hour workday, and stand and/or walk for two hours in an eight-hour workday. AR 45. While the ALJ found Crayton's impairments could reasonably be expected to produce the pain and symptoms he alleged, she found his statements concerning the intensity, persistence, and limiting effects of the symptoms "not entirely credible." AR 46. The ALJ supported her finding with these facts: the claimant is diabetic but not insulin dependent, suffers from sleep apnea but does not use a CPAP machine, treatment for his degenerative joint disease is relatively conservative and non-surgical, and doctors describe his gait as normal. AR 46–47. Additionally, the ALJ found that Crayton was more active than his statements at the hearing indicated, since he told his doctor he was "play wrestling" with his wife when he fell down an embankment in September 2103 and working moving furniture in April of 2014. AR 47.

The ALJ also believed that Crayton's bipolar disorder was less limiting than alleged because treatment records show that it is controlled by medication and that he is calm, soft-spoken, pleasant, and cooperative. AR 48. His treating physician Dr. Jennifer Fish described him as a "nice guy." AR 48.

The ALJ gave the opinion of State medical consultant Dr. N. Tsoulos great weight. AR 48. Dr. Tsoulos made the RFC determination at the initial level. The ALJ further noted that evidence produced at the hearing, which was unavailable to Dr. Tsoulos at the time of his determination, was consistent with Dr. Tsoluos's earlier assessment. AR 48, 88. The ALJ also gave great weight to the opinion of the State's psychologist at the initial level, Dr. Mark Berkowitz. AR 48. Dr. Berkowitz stated Crayton was able to perform unskilled work with limited public interaction, and the ALJ found that this was supported by other evidence in the record. AR 48, 93. The ALJ noted in her decision that there were no medical or psychological opinions at the reconsideration level due to Crayton's failure to attend consultative appointments. AR 48.

The ALJ gave limited weight to the medical opinion of Crayton's primary care provider, Dr. Fish, finding Dr. Fish's responses on the Diabetes Questionnaire to be inconsistent with her own treatment records. AR 49. Additionally, the ALJ noted that Dr. Fish had been treating Crayton for only eight months at the time the form was completed and that the record contained no support for the assertion Crayton was unable to sit longer than three hours. AR 49. Similarly, the ALJ gave the opinion of psychologist Dr. Alvarez limited weight. AR 50. Dr. Alvarez saw Crayton only three times before completing a Psychological Impairment Questionnaire, which was based heavily on Crayton's self-reports. AR 49. The ALJ considered Dr. Alvarez's assessment of Crayton—in particular, the Global Assessment of Functioning (GAF) score of 20 she assigned—to be inconsistent with those assigned by doctors at the California Department of Corrections (55 and 65) and her own treatment notes. AR 49.

The ALJ also reviewed Third Party Function Reports provided by Crayton's wife and friend but gave little weight to these statements. AR 50. These reports include

statements regarding Crayton's activity level and functional limitations that were consistent with Crayton's statements, but inconsistent with objective medical evidence and medical opinions of record. The ALJ considered Crayton's alleged symptoms less credible due to inconsistencies between his hearing testimony and what he told his doctors regarding his activity level and future work plans. AR 50. The ALJ noted specifically Crayton's stated desire in December of 2012 to return to the music business and the September 2013 "play wrestling" with his wife as inconsistent with the severity of the symptoms that he alleged at the hearing. AR 50. Referencing Crayton's sporadic work history prior to the alleged disability date, the ALJ questioned whether his continuing unemployment is actually due to medical impairments. AR 50.

At the last step, the ALJ determined that considering Crayton's age, education, work experience, and RFC, there are jobs that exist in significant numbers in the national economy which he can perform. AR 51. In support of this determination, the ALJ noted that Crayton was a younger individual with a high school education and is able to communicate in English. The ALJ found that transferability of job skills is not an issue because Crayton does not have past relevant work.

At the hearing, the VE testified that a hypothetical person of Crayton's age, education, work experience, and RFC would be able to perform the requirements of representative occupations such as final assembler, document preparer, or printed circuit layout taper. AR 51–52. The VE also testified that there were 1,800 final assembler jobs in the regional economy, 5,100 document preparer jobs in the regional economy, and 16,000 printed circuit layout taper jobs in the regional economy. In the written decision, the ALJ found that "[p]ursuant to SSR 00-4p, the undersigned has determined that the vocational expert's testimony is consistent with the information contained in the Dictionary of Occupational Titles." AR 52. The ALJ concluded that Crayton was capable of making a successful adjustment to other work that exists in significant numbers in the national economy and is "not disabled." AR 52.

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## STANDARD OF REVIEW

The district court reviews the Commissioner's final decision under the substantial evidence standard; the decision will be disturbed only if it is not supported by substantial evidence or is based on legal error. See 42 U.S.C. § 405(g) ("findings of the Commissioner of Social Security as to any fact, if supported by substantial evidence, shall be conclusive"); Smolen v. Chater, 80 F.3d 1273, 1279 (9th Cir. 1996); Andrews, 53 F.3d at 1039. "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Webb v. Barnhart, 433 F.3d 683, 686 (9th Cir. 2005). "'Substantial evidence' means 'more than a scintilla,' but 'less than a preponderance.'" Smolen, 80 F.3d at 1279 (quotations and citations omitted); Valentine v. Comm'r of Soc. Sec. Admin., 574 F.3d 685, 690 (9th Cir. 2009).

If the evidence is subject to more than one rational interpretation, the court must uphold the ALJ's findings if they are "'supported by inferences reasonably drawn from the record.'" Tommasetti v. Astrue, 533 F.3d 1035, 1038 (9th Cir. 2008) (quoting Batson v. Comm'r of Soc. Sec. Admin., 359 F.3d 1190, 1193 (9th Cir. 2004)); see also Burch v. Barnhart, 400 F.3d 676 (9th Cir. 2005). The court may not reverse an ALJ's decision on account of harmless error. Id. When the Appeals Council denies review after evaluating the entire record, including newly submitted evidence, that new evidence becomes a part of the administrative record to be reviewed by this court on appeal. See Ramirez v. Shalala, 8 F.3d 1449, 1452 (9th Cir. 1993). Thus, this court must consider the evidence before both the ALJ and the Appeals Council in reviewing the ALJ's decision. Id.

## ISSUES

Crayton seeks review of the Commissioner's denial of benefits on two grounds:

(1) The ALJ erred in granting little weight to the opinions of the treating doctors regarding Crayton's mental limitations.

(2) The ALJ failed to support the credibility determination for claimant with clear and convincing reasons.

## DISCUSSION

### A. The ALJ Correctly Addressed and Weighed the Opinions of Crayton's Treating Physicians

#### 1. Legal Standard

The standard for the proper weight to give treating source opinions is determined by whether there are contradictory opinions in the record. If a treating doctor's opinion is not contradicted by another doctor (i.e., there are no other opinions from examining or nonexamining sources), it may be rejected only for "clear and convincing" reasons supported by substantial evidence in the record. See Ryan v. Comm'r of Soc. Sec. Admin., 528 F.3d 1194, 1198 (9th Cir. 2008); Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1996). The clear and convincing standard is the most demanding required in Social Security cases. Moore v. Comm'r of Soc. Sec. Admin., 278 F.3d 920, 924 (9th Cir. 2002). Treating physicians' subjective judgments are important, and "properly play a part in their medical evaluations." Embrey v. Bowen, 849 F.2d 418, 422 (9th Cir. 1988).

If the ALJ rejects a treating or examining physician's opinion that is contradicted by another doctor, he must provide specific, legitimate reasons based on substantial evidence in the record. See Valentine, 574 F.3d at 692 (9th Cir. 2009); Ryan, 528 F.3d at 1198; Turner v. Comm'r of Soc. Sec. Admin., 613 F.3d 1217, 1222 (9th Cir. 2010).

The ALJ must accord "controlling weight" to a treating doctor's opinion if medically-approved diagnostic techniques support the opinion, and the opinion is not inconsistent with other substantial evidence. See 20 C.F.R. § 404.1527(d)(2); Lingenfelter v. Astrue, 504 F.3d 1028, 1038 n.10 (9th Cir. 2007); Orn v. Astrue, 495 F.3d 625, 632–33 (9th Cir. 2007). If the opinion is not accorded controlling weight, then the ALJ looks to a number of other factors in determining how much weight to give it. These factors include the length of the treatment relationship, frequency of examination, nature and extent of treatment relationship, evidence supporting the treating doctor's opinion, consistency of the opinion, and the doctor's specialization. See 20 C.F.R. § 404.1527(d)(2)-(d)(6); see also Trevizo v. Berryhill, No. 15-16277, 2017 U.S. App. LEXIS 12263, at *41 (9th Cir. July 10, 2017).

**2. The Opinions of Dr. Fish and Dr. Alvarez**

Crayton argues that the ALJ's decision to give little or no weight to opinions of the treating physician and psychologist regarding his mental function limitations constituted harmful legal error. Crayton alleges that these opinions are uncontradicted and may only be rejected for "clear and convincing reasons that are supported by substantial evidence." Bayliss v. Barnhart, 427 F.3d 1211, 1216 (9th Cir. 2005). This is based on plaintiff's assertion that the opinion of the non-examining psychologist, Dr. Berkowitz, is not substantial evidence absent other independent findings in the record.

"The opinion of a nonexamining physician cannot by itself constitute substantial evidence that justifies the rejection of the opinion of either an examining physician or a treating physician." Lester, 81 F.3d at 831. The Commissioner does not argue that the treating source opinions are contradicted by other medical opinions. Thus, the court must determine whether the ALJ provided clear and convincing reasons, supported by evidence in the record, to give little weight to the treating physician and psychologist's opinions.

Crayton asserts that the ALJ rejected Dr. Fish's opinion regarding mental function limitations for two reasons: (1) length of treatment relationship; and (2) the belief that Dr. Fish's opinion regarding mental limitations was inconsistent with Crayton's "relatively benign and conservative treatment record." AR 49. However, the ALJ also specifically referenced other inconsistencies as a reason for discounting Dr. Fish's opinion, which is an appropriate factor under the Act. See 20 C.F.R. § 404.1527(c)(4) ("Generally, the more consistent a medical opinion is with the record as a whole, the more weight we will give to that medical opinion.").

The ALJ did not reject Dr. Fish's opinion but assigned it "limited weight," noting that the doctor had only seen Crayton for eight months at the time of the opinion and that there was "no objective support in the record" for certain alleged physical limitations (inability to sit for more than three hours and need to change positions frequently). AR

49.[1] Specifically, Dr. Fish's opinion that Crayton would be distracted by his symptoms 15–20 times per day and absent from work more than three times per month was "inconsistent with [her] own relatively benign and conservative treatment records." AR 49. The record shows Crayton was on lithium an unknown number of years prior to 2012, and Remeron prior to July 5, 2012, which could be considered more aggressive treatment. AR 307, 317. However, the ALJ's opinion states that according to Dr. Fish's notes, Crayton's bipolar disorder is under control with the current medication regimen when he complies with it. AR 48. Moreover, Dr. Fish's opinion regarding Crayton's likely distractedness and absenteeism at work was inconsistent with the treatment notes that described Crayton as pleasant, cooperative, and a "nice guy." AR 48. Crayton regularly denied feeling "depressed or hopeless" or having "little interest or pleasure in doing things." AR 48.

In deciding to give the opinion of Dr. Alvarez "limited weight," the ALJ noted the limited number of visits (three) prior to Dr. Alvarez's first medical opinion. The ALJ also relied on the fact that Dr. Alvarez's opinion was based heavily on Crayton's self-reported symptoms, rather than the doctor's observations or objective testing. AR 49. Additionally, Dr. Alvarez's opinions were inconsistent with her own treatment notes and there were large variances between the GAF scores assigned by Dr. Alvarez and State psychologists during Crayton's incarceration. AR 49–50.

Among the factors the ALJ cited for giving the opinions of both Drs. Fish and Alvarez limited weight was length of treatment relationship. As noted in plaintiff's motion, the Ninth Circuit does not have a floor for the number of visits to create a treatment relationship. See Ghokassian v. Shalala, 41 F.3d 1300, 1303 (9th Cir. 1994) (holding that a physician who saw the claimant twice in fourteen months was a treating physician where the claimant saw no other doctors during that period, listed the doctor as his

[1] Crayton has chosen to confine his argument to mental impairments only; physical limitations are referenced because the ALJ relied on this discrepancy in assigning weight to Dr. Fish's opinion as to the mental impairment.

treating physician, and the doctor referred to claimant as "my patient"). Nor does the Act set forth a minimum. "We may consider an acceptable medical source who has treated or evaluated you only a few times or only after long intervals (e.g., twice a year) to be your treating source if the nature and frequency of the treatment or evaluation is typical for your condition(s)." 20 C.F.R. § 404.1527(a)(2).

The court finds that the length of treatment relationship alone would not satisfy the clear and convincing standard to reject a treating source opinion. However, this was only one factor cited by the ALJ in determining how much weight to give the opinions.

A treating source opinion may also be rejected if it is based primarily on a claimant's self-reports that have been properly discounted as incredible. Tommasetti, 533 F.3d at 1041; see also Morgan v. Comm'r of Soc. Sec. Admin., 169 F.3d 595, 599 (9th Cir. 1999) (holding the clear and convincing standard for rejecting the claimant's testimony was satisfied where the ALJ pointed to specific evidence in the record to identify what testimony was not credible and what evidence undermined claimant's complaints); Batson, 359 F.3d at 1195 (holding that the ALJ did not err in giving minimal weight to the treating physician's opinion because it was in the form of a checklist, did not have supportive objective evidence, was contradicted by other statements and assessments, and was based on claimant's subjective descriptions of pain). Here, the ALJ rejected Dr. Alvarez's opinion because it was based heavily on Crayton's self-reports and referenced facts Dr. Alvarez would have no independent knowledge of, such as Crayton's low IQ and the onset of symptoms. AR 438, 444–45. The ALJ then provided reasons why she found Crayton not credible. AR 50.

The Ninth Circuit has held that inconsistencies between a doctor's own treatment notes and medical opinion is a clear and convincing reason to support rejection of that opinion. See Bayliss, 427 F.3d at 1216 (upholding an ALJ's decision to not rely on the doctor's opinion where the doctor's own clinical notes and observations contradicted the opinion, calling such a discrepancy a "clear and convincing reason"); Weetman v. Sullivan, 877 F.2d 20, 23 (9th Cir. 1989) (holding that when a doctor's opinion is clearly

inconsistent with his own exam notes, it is a clear and convincing reason for an ALJ to reject his opinion).

Here, the ALJ specifically referenced Dr. Alvarez's treatment notes, which described Crayton as "very calm" and "much less depressed." AR 50. Crayton argues the ALJ was "cherry-picking" by pointing to a "single benign chart note" and overlooking other more remarkable findings, such as "slowed speech," neutral to depressed mood, and resumption of marijuana use. Pl.'s Mot. at 17. In fact, the ALJ's decision prefaced its discussion of the "calm" treatment note with a "for instance," indicating that it was just one example. AR 50. The record shows Dr. Alvarez reported Crayton appeared calm on at least eight other occasions. AR 481, 487, 510, 513, 515, 524, 543, 545. On all but one of those visits, Crayton self-reported feelings of anger. Dr. Alvarez's medical opinions dated July 30, 2013 and January 3, 2014 both describe Crayton as experiencing "severe anger," but there is nothing in the record to indicate she ever directly observed this. AR 440, 467. This supports the ALJ's determination that Dr. Alvarez's medical opinion was influenced by Crayton's self-reported symptoms.

In sum, the ALJ provided numerous specific reasons for giving Dr. Alvarez's opinion of Crayton's mental impairments little weight. The ALJ also provided specific reasons for giving Dr. Fish's opinion regarding mental impairments little weight (although Dr. Fish's opinion primarily focused on physical limitations). In both instances, the ALJ pointed to specific evidence in the record to support her determination, meeting the clear and convincing standard.

**B. The ALJ Properly Assessed Crayton's Credibility**

**1. Legal Standard**

To properly assess the credibility of a claimant's testimony regarding subjective symptoms, the ALJ is to perform a two-step analysis. Lingenfelter, 504 F.3d at 1035–36. First, the ALJ determines whether the claimant has presented objective medical evidence of an underlying impairment which could reasonably be expected to produce the symptoms alleged. Id. at 1036. If this is satisfied, and there is no evidence of

malingering, the ALJ may reject the claimant's testimony regarding the severity of the symptoms only by stating clear and convincing reasons for the decision. Id.

The ALJ is required to state which symptom testimony is found not credible with enough specificity to allow a reviewing court to confirm that the testimony was rejected on permissible grounds and not arbitrarily. Benton v. Barnhart, 331 F.3d 1030, 1040–41 (9th Cir. 2003). General findings are insufficient; rather, the ALJ must identify what testimony is not credible and what evidence undermines the claimant's complaints. Lester, 81 F.3d at 834.

**2. Claimant's Credibility**

Crayton contends that the ALJ's determination that Crayton's testimony was not entirely credible is not supported by clear and convincing reasons.

The ALJ determined that Crayton's credibility was "reduced due to inconsistencies between his testimony and what he told his clinicians," as well as other statements and actions suggesting his symptoms were less severe than alleged (e.g., moving furniture, his expressed desire to work in the music industry, and play wrestling with his wife). AR 50.

The Commissioner argues that discrepancies in Crayton's ability to work at all are a proper basis for evaluating his credibility, as are inconsistencies in his daily activities, such as caring for children. See Molina v. Astrue, 674 F.3d 1104, 1112 (9th Cir. 2012) (stating that an "ALJ may consider inconsistencies either in the claimant's testimony or between the testimony and the claimant's conduct"); Klyse v. Colvin, 555 F. App'x 615, 2014 WL 689826 (9th Cir. 2014) (unpublished) (ALJ appropriately discounted claimant's credibility, citing her daily activities, e.g., caring for three foster children, housework, gardening, and swimming) (citing Chaudhry v. Astrue, 688 F.3d 661, 672 (9th Cir. 2012)); compare Trevizo, 2017 U.S. App. LEXIS 12263 at *24, 37 (noting that where there was "almost no information in the record" about what the claimant's regular childcare activities involved, the "mere fact that [claimant] cares for small children does not constitute an adequately specific conflict with her reported limitations.").

The ALJ pointed to the specific symptom testimony from Crayton that she found not credible and supported that finding with evidence in the record:

(1) Crayton alleged impairment in activities of daily living, specifically he does not get dressed or attend to personal hygiene unless he has an appointment. The ALJ found that this testimony was contradicted by Crayton's appearance to doctors (clean and well-groomed) and ability to care for two small children. AR 43–44.

(2) Crayton reported difficulty getting along with people, authority figures in particular, and having explosive anger. However, Crayton was never sent to segregated housing or written up for failing to get along with others while incarcerated. AR 44.

(3) Crayton "frequently complained of panic, anxiety, and anger issues to his doctors." However, the ALJ observed that the "treatment records show that the claimant regularly presented as calm, cooperative, and pleasant, and records noted that he made good eye contact." AR 44, 48.

(4) Crayton reported panic attacks which keep him isolated in his room most of the day. Again, the ALJ found that Crayton's "treatment records do not reflect this severe level of isolation," and that this testimony is contradicted by his work outside the home as a furniture mover. AR 44, 47.

(5) Crayton alleged that he is unable to concentrate for more than a minute or two, is distracted by racing thoughts, and has poor memory. However, state psychologists found that while Crayton was easily distracted and had short-term memory issues, he was oriented and his thought processes were within normal limits. AR 44–45, 47.

In summary, the ALJ acknowledged that Crayton has "some functional limitations due to his bipolar disorder, [but] finds the claimant is not as severely limited as alleged. Although the claimant reported problems with irritability and anger, he is frequently presented as calm, soft-spoken, and with good eye contact." AR 48. Overall, the ALJ

found that Crayton's "statements to his treating doctors suggest that he was functioning at a higher level than indicated through his testimony," pointing to Crayton's work as a furniture mover and ability to care for two small children. AR 48.

The ALJ has provided clear and convincing reasons with sufficient specificity to satisfy the standard for rejecting claimant's subjective symptom testimony. If the ALJ's credibility finding is supported by substantial evidence in the record, the court is not to second-guess it. Thomas, 278 F.3d at 959.

**CONCLUSION**

For the foregoing reasons, the court GRANTS the Commissioner's motion for summary judgment, DENIES Crayton's motion, and AFFIRMS the decision of the ALJ. This order fully adjudicates the motions listed as docket numbers twelve and eighteen, and terminates all pending motions. The clerk shall close the file.

**IT IS SO ORDERED.**

Dated: July 17, 2017

PHYLLIS J. HAMILTON
United States District Judge

United States District Court
Northern District of California