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2
3 **UNITED STATES DISTRICT COURT**
4 **EASTERN DISTRICT OF WASHINGTON**

5 Case No. 1:15-cv-03062-JPH

6
7 RICHARD PROUSE,

8 Plaintiff,

9 vs.

10 CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

11 Defendant.

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT

12
13 **BEFORE THE COURT** are cross-motions for summary judgment. ECF No.
14 15, 18. Attorney D. James Tree represents plaintiff (Prouse). Special Assistant
15 United States Attorney Tina R. Saladino represents defendant (Commissioner). The
16 parties consented to proceed before a magistrate judge. ECF No. 7. On November 2,
17 2015, plaintiff filed a reply. ECF No. 19. After reviewing the administrative record
18 and the briefs filed by the parties, the court **grants** defendant's motion for summary
19 judgment, ECF No. 18.

20 **JURISDICTION**

Prouse protectively applied for supplemental security income disability

ORDER ~ 1

1 benefits (SSI) on April 16, 2010, alleging onset as of April 15, 2010. (Tr. 96-99.)
2 The claim was denied initially and on reconsideration. (Tr. 40-44, 51-52.)
3 Administrative Law Judge (ALJ) Timothy Mangrum held hearings March 12, 2013
4 and September 3, 2013. Prouse, represented by counsel, and vocational experts
5 testified. (Tr. 445-482.) On December 23, 2103, the ALJ issued an unfavorable
6 decision. (Tr. 16-28.) The Appeals Council denied review March 4, 2015 (Tr. 4-10),
7 making the ALJ's decision final. On April 30, 2015 Prouse filed this appeal pursuant
8 to 42 U.S.C. §§ 405(g). ECF No. 1, 4.

9 **STATEMENT OF FACTS**

10 The facts have been presented in the administrative hearing transcripts, the
11 ALJ's decision and the parties' briefs. They are only briefly summarized here and
12 throughout this order as necessary to explain the Court's decision.

13 Prouse was nineteen years old when he applied for benefits. He has a tenth or
14 eleventh grade education, has not earned a GED and has no past relevant work.
15 Activities include watching television, playing video games, cooking, cleaning,
16 laundry, yard work and spending time with friends and a girlfriend. Prouse alleges
17 physical and mental limitations. (Tr. 27, 146, 156, 478.)

18 **SEQUENTIAL EVALUATION PROCESS**

19 The Social Security Act (the Act) defines disability as the "inability to engage
20 in any substantial gainful activity by reason of any medically determinable physical

1 or mental impairment which can be expected to result in death or which has lasted or
2 can be expected to last for a continuous period of not less than twelve months.” 42
3 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act also provides that a plaintiff shall
4 be determined to be under a disability only if any impairments are of such severity
5 that a plaintiff is not only unable to do previous work but cannot, considering
6 plaintiff’s age, education and work experiences, engage in any other substantial
7 work which exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A),
8 1382c(a)(3)(B). Thus, the definition of disability consists of both medical and
9 vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001).

10 The Commissioner has established a five-step sequential evaluation process
11 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520, 416.920. Step
12 one determines if the person is engaged in substantial gainful activities. If so,
13 benefits are denied. 20 C.F.R. §§ 404.1520(a)(4)(i), 416.920(a)(4)(i). If not, the
14 decision maker proceeds to step two, which determines whether plaintiff has a
15 medically severe impairment or combination of impairments. 20 C.F.R. §§
16 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

17 If plaintiff does not have a severe impairment or combination of impairments,
18 the disability claim is denied. If the impairment is severe, the evaluation proceeds to
19 the third step, which compares plaintiff’s impairment with a number of listed
20 impairments acknowledged by the Commissioner to be so severe as to preclude

1 substantial gainful activity. 20 C.F.R. §§ 404.1520(a)(4)(iii), 416.920(a)(4)(iii); 20
2 C.F.R. § 404 Subpt. P App. 1. If the impairment meets or equals one of the listed
3 impairments, plaintiff is conclusively presumed to be disabled. If the impairment is
4 not one conclusively presumed to be disabling, the evaluation proceeds to the fourth
5 step, which determines whether the impairment prevents plaintiff from performing
6 work which was performed in the past. If a plaintiff is able to perform previous work
7 that plaintiff is deemed not disabled. 20 C.F.R. §§ 404.1520(a)(4)(iv),
8 416.920(a)(4)(iv). At this step, plaintiff's residual functional capacity (RFC) is
9 considered. If plaintiff cannot perform past relevant work, the fifth and final step in
10 the process determines whether plaintiff is able to perform other work in the national
11 economy in view of plaintiff's residual functional capacity, age, education and past
12 work experience. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v); *Bowen v.*
13 *Yuckert*, 482 U.S. 137 (1987).

14 The initial burden of proof rests upon plaintiff to establish a *prima facie* case
15 of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th Cir.
16 1971); *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). The initial burden is
17 met once plaintiff establishes that a mental or physical impairment prevents the
18 performance of previous work. The burden then shifts, at step five, to the
19 Commissioner to show that (1) plaintiff can perform other substantial gainful
20

1 activity and (2) a “significant number of jobs exist in the national economy” which
2 plaintiff can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9th Cir. 1984).

3 STANDARD OF REVIEW

4 Congress has provided a limited scope of judicial review of a Commissioner’s
5 decision. 42 U.S.C. § 405(g). A Court must uphold a Commissioner’s decision,
6 made through an ALJ, when the determination is not based on legal error and is
7 supported by substantial evidence. *See Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir.
8 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). “The [Commissioner’s]
9 determination that a plaintiff is not disabled will be upheld if the findings of fact are
10 supported by substantial evidence.” *Delgado v. Heckler*, 722 F.2d 570, 572 (9th Cir.
11 1983)(citing 42 U.S.C. § 405(g)). Substantial evidence is more than a mere scintilla,
12 *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n 10 (9th Cir. 1975), but less than a
13 preponderance. *McAllister v. Sullivan*, 888 F.2d 599, 601-02 (9th Cir. 1989).
14 Substantial evidence “means such evidence as a reasonable mind might accept as
15 adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S. 389, 401
16 (1971)(citations omitted). “[S]uch inferences and conclusions as the [Commissioner]
17 may reasonably draw from the evidence” will also be upheld. *Mark v. Celebreeze*,
18 348 F.2d 289, 293 (9th Cir. 1965). On review, the Court considers the record as a
19 whole, not just the evidence supporting the decision of the Commissioner. *Weetman*
20 *v. Sullivan*, 877 F.2d 20, 22 (9th Cir. 1989)(quoting *Kornock v. Harris*, 648 F.2d 525,

1 526 (9th Cir. 1980)).

2 It is the role of the trier of fact, not this Court, to resolve conflicts in evidence.
3 *Richardson*, 402 U.S. at 400. If evidence supports more than one rational
4 interpretation, the Court may not substitute its judgment for that of the
5 Commissioner. *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9th
6 Cir. 1984). Nevertheless, a decision supported by substantial evidence will still be
7 set aside if the proper legal standards were not applied in weighing the evidence and
8 making the decision. *Browner v. Secretary of Health and Human Services*, 839 F.2d
9 432, 433 (9th Cir. 1987). Thus, if there is substantial evidence to support the
10 administrative findings, or if there is conflicting evidence that will support a finding
11 of either disability or nondisability, the finding of the Commissioner is conclusive.
12 *Sprague v. Bowen*, 812 F.2d 1226, 1229-30 (9th Cir. 1987).

13 **ALJ'S FINDINGS**

14 At step one the ALJ found Prouse did not work at SGA levels after he applied
15 for benefits. (Tr. 18.) At steps two and three, he found Prouse suffers from history
16 of attention deficit hyperactivity disorder (ADHD)[He took ritalin for this until he
17 turned eighteen.]; borderline intellectual functioning; affective disorder; anxiety and
18 personality disorder, impairments that are severe but do not meet or medically equal
19 a Listed impairment. (Tr. 18, 20.) The ALJ found Prouse less than fully credible.
20 (Tr. 22.) He found plaintiff is able to perform a full range of work at all exertional

1 levels but has mental limitations. (Tr. 21.) At step four, ALJ Mangrum found
2 plaintiff has no past relevant work. At step five, relying on a vocational expert's
3 testimony, the ALJ found Prouse can perform other jobs, such as laundry worker,
4 hand packager and generic production assembler. Accordingly, the ALJ found
5 plaintiff not disabled as defined by the Act. (Tr. 27-28.)

6 **ISSUES**

7 Prouse alleges the ALJ erred when he evaluated the medical evidence and
8 assessed credibility. ECF No. 15 at 10. The Commissioner responds that the ALJ's
9 findings are factually supported and free of harmful legal error. She asks the court to
10 affirm. ECF No. 18 at 2-3.

11 **DISCUSSION**

12 *A. Credibility*

13 Prouse alleges the ALJ's credibility assessment is not properly supported.
14 ECF No. 15 at 22-30.

15 When presented with conflicting medical opinions, the ALJ must determine
16 credibility and resolve the conflict. *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d
17 1190, 1195 (9th Cir. 2004)(citation omitted). The ALJ's credibility findings must be
18 supported by specific cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th
19 Cir. 1990). Absent affirmative evidence of malingering, the ALJ's reasons for
20 rejecting the claimant's testimony must be "clear and convincing." *Lester v. Chater*,

1 81 F.3d 821, 834 (9th Cir. 1995). “General findings are insufficient: rather the ALJ
2 must identify what testimony is not credible and what evidence undermines the
3 claimant’s complaints.” *Lester*, 81 F.3d at 834; *Dodrill v. Shalala*, 12 F.3d 915, 918
4 (9th Cir. 1993).

5 The ALJ’s finding is fully supported.

6 Plaintiff has been diagnosed with drug seeking behavior, as the ALJ points
7 out. He showed a pattern between December 2010 through May 2012 of visiting the
8 ER and “magnifying his physical symptoms for the purpose of obtaining narcotic
9 medication.” This included admitting to an ER doctor in December 2012 he has been
10 snorting tramadol (ultram), apparently prescribed for wrist pain. In August 2011 he
11 left the ER when told he would not be prescribed narcotic medication (Tr. 24, 122,
12 226, 332, 375.)

13 Plaintiff has failed to comply with medical treatment, without adequate
14 explanation. He told Dr. Adkison that after suffering an injury to his left hand, it was
15 put in a cast; however, he removed it three weeks later “after having an argument
16 with his mother.” He testified that he was hit in the left hand by brass knuckles in a
17 fight and was put in a splint. Against medical advice he reinjured it playing football
18 with friends a week later (Tr. 19, 186, 475). *See also* Tr. 139-40 (noted is
19 noncompliant with mental health treatment process, refuses any mental health
20 services); Tr. 144 (reports was dropped from mental health services for non-

1 compliance).

2 Plaintiff's subjective complaints are unsupported by the medical evidence. He
3 testified he cannot lift anything with his left arm, it becomes "really sore" after
4 typing on the computer for 20 to 30 minutes and he drops the phone because of his
5 hand issues. (Tr. 476-77.) The medical record shows he recovered completely after
6 surgery.

7 Daily activities are inconsistent with the limitations plaintiff describes.
8 Plaintiff testified he worked for a friend two months earlier, opening the friend's
9 shop, sitting the counter and closing the shop, while his friend was out of town. (Tr.
10 471). Plaintiff also works checking identification and watching the cash register at a
11 private club. Both jobs are reportedly paid "under the table." He spends his time
12 hanging out with friends and his girlfriend, playing video games and watching
13 television. (Tr. 20, 156, 166, 257, 329.)

14 The ALJ considered plaintiff's many inconsistent statements. In March 2012
15 he said he was fired from a job at a "cherry factory in July 2011," but in December
16 2011 he told another examiner he quit on July 5, 2011, because of a panic attack (Tr.
17 23, 155, 241.) Plaintiff has inconsistently reported a history of abuse as a child. In
18 March 2013 Prouse reported he grew up with an alcoholic father who beat all the
19 family members on a daily basis. In August 2009 he said he had no history of
20 physical abuse growing up. (Tr. 23, 133, 165.) He has inconsistently reported his

1 substance abuse history. Plaintiff testified he used methamphetamines for only a few
2 months. In 2012 he reported he had used it daily for a year and a half (Tr. 23-24,
3 155, 464.) The ALJ cites other instances of these inconsistencies, including reported
4 marijuana use. All are fully supported by the record. *See* Tr. 24, 147 (reports in
5 January 2011 he last used marijuana in September 2010 and methamphetamine in
6 October 2010); 234 (reports in August 2011 last used marijuana in April 2010);
7 343-44 (on May 1, 2012, reports clean from methamphetamine for six months, last
8 used marijuana on April 6, 2012 and snorted tramadol on May 1, 2012); 464
9 (testified last used methamphetamine on Halloween in 2010).

10 Examiner Dr. Neer opined “claimant’s report was at times questionable in
11 reliability.” (Tr. 154.) Plaintiff told psychologist Dr. Moon he could not work
12 because of his left arm, he works side jobs and lived with his older sister. (Tr. 165-
13 66.)

14 The ALJ also notes plaintiff’s criminal history does not enhance his
15 credibility. (Tr. 24.) Plaintiff has a felony conviction for burglary and lesser
16 convictions of domestic violence, assault, violation of a no contact order and
17 malicious mischief. (Tr. 131, 133, 139, 146, 166.)

18 Although lack of supporting medical evidence cannot form the sole basis for
19 discounting pain testimony, it is a factor the ALJ can consider when analyzing
20 credibility. *Burch v. Barnhart*, 400 F.3d 676, 680 (9th Cir. 2005). Subjective

1 complaints contradicted by medical records and by daily activities, as well as
2 inconsistent statements, are properly considered. *Carmickle v. Comm’r of Soc. Sec.*
3 *Admin.*, 533 F.3d 1155, 1161 (9th Cir. 2008); *Thomas v. Barnhart*, 278 F.3d 947,
4 958-59 (9th Cir. 2002).

5 The ALJ’s credibility assessment is supported by the evidence and free of
6 harmful error. Plaintiff’s allegations that the Commissioner supplies reasons the
7 ALJ did not articulate is not supported by the record.

8 *B. Physical impairments*

9 Prouse alleges the ALJ erred at step two. He alleges the ALJ should have
10 found his left wrist impairment is severe and causes work-related limitations. ECF
11 No. 15 at 30-31. The Commissioner responds that the ALJ appropriately weighed
12 the medical opinions and evidence. ECF No. 18 at 3-5.

13 The Commissioner is correct.

14 A diagnosis may establish a medically determinable impairment, but does not
15 alone establish an impairment is severe. An impairment or combination of
16 impairments may be found “not severe only if the evidence establishes a slight
17 abnormality that has no more than a minimal effect on an individual’s ability to
18 work.” *Webb. Barnhart*, 433 F.3d 683, 686 (9th Cir. 2005)(citing *Smolen v. Chater*,
19 80 F.3d 1273, 1290 (9th Cir. 1996)(internal quotation marks omitted). Step two is a
20 “de minimis screening device [used] to dispose of groundless claims,” and an ALJ

1 may find that a claimant lacks a medically severe impairment or combination of
2 impairments only when his conclusion is “clearly established by medical evidence.”
3 *Webb*, 433 F. 3d a 687, citing *Smolen*, 80 F.3d at 1290; S.S.R. 85-28.

4 In August 2012 plaintiff had surgery, an osteotomy, to repair his left wrist.
5 (Tr. 19, 192.) At a postoperative appointment in December 2012, he reported
6 marked improvement in pain and range of motion. He denied tingling or numbness
7 in his hands or fingers. On examination, there was no tenderness in the left hand and
8 his wrist had full, active pain-free range of motion. When seen in January and March
9 2013 plaintiff denied any pain in his upper extremities. In July 2013 motor strength
10 was 5/5, sensation was intact and range of motion was full throughout all
11 extremities. (Tr. 19, 404, 412, 416, 434.) As the ALJ observes, within twelve months
12 of the injury plaintiff had full, active pain-free range of motion in his left wrist. The
13 July 2013 examination revealed no left wrist impairment or limitations. The record
14 fully supports the ALJ’s step two finding that plaintiff does not suffer a severe left
15 wrist impairment that causes any more than minimal work-related limitations.

16 *C. Psychological impairments*

17 Plaintiff alleges the ALJ improperly rejected the opinions of Mr. Clark, Mr.
18 Moen and Dr. Rodenberger, Mr. Anderson and Tae-Im Moon, Ph.D. ECF No. 15 at
19 12. Specifically, he alleges the ALJ erred when he found various sources failed to
20 perform a mental status examination because they did, in fact, perform these

1 examinations. ECF No. 15 at 15-16, citing Tr. 172-73 (MSE performed by Chris
2 Clark, M.Ed., November 4, 2009); Tr. 195-200 (Clark's evaluation also dated
3 November 4, 2009); Tr. 174-77 (MSEs performed by Moen and Rodenberger).

4 The Commissioner responds that the ALJ's assessment of these opinions is
5 supported overall. ECF No. 18 at 5-15. The Court agrees.

6 Plaintiff worked checking identification at a private club. (Tr. 166.) He
7 worked at a store open to the public. Other examining sources opined plaintiff has
8 no severe mental impairment. See Tr. 157 (John Neer, Psy.D., opined in March 2012
9 plaintiff presents as rather immature but does not appear to suffer any major mental
10 illness). The ALJ properly relied on this evidence when he rejected the assessed
11 severe limitations. Any error in failing to credit the MSEs was clearly harmless.

12 The ALJ rejected some of the dire assessments because there was no
13 objective evidence supporting them, they were on a check box form, other
14 examining sources contradicted them and plaintiff worked during the relevant
15 period. The ALJ's reasons are specific, legitimate and supported by the record. An
16 ALJ may properly reject any opinion that is brief, conclusory and inadequately
17 supported by clinical findings. *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir.
18 2005). Opinions given in formats that provide little opportunity for the physician to
19 explain the bases of their opinion, such as check-box forms, are entitled to little
20 weight. *Crane v. Shalala*, 76 F.3d 251, 253 (9th Cir. 1996). Moreover, plaintiff

1 *himself* felt he was able to work at various times, and he has worked, indicating
2 greater ability than assessed by these sources.

3 As a non-acceptable medical sources, the opinions of Mr. Clark, Mr. Moen,
4 and Mr. Anderson need only be rejected by germane reasons. *Molina v. Astrue*, 674
5 F.3d 1104, 1111 (9th Cir. 2012). The ALJ's reasons are germane. These opinions are
6 contradicted by other evidence, including plaintiff's self-reported activities.

7 The ALJ credited Dr. Moon's opinion that plaintiff is limited to unskilled
8 work, should have no contact with the public, and contact with co-workers is limited
9 to occasional. He rejected Moon's opinion that mood instability, in part, interferes
10 with the ability to work because it not supported by clinical findings. (Tr. 25, 240.)
11 The ALJ is correct. Dr. Moon did not observe this reported symptom, and plaintiff's
12 self-reporting is highly unreliable. Dr. Moon also assessed a marked limitation in the
13 ability to maintain appropriate behavior in a work setting (Tr. 167), but this is
14 plainly contradicted by plaintiff's ability to work.

15 The assessed RFC appears to fully account for the limitations supported by the
16 record. Prouse alleges the ALJ should have weighed the evidence differently, but the
17 ALJ is responsible for reviewing the evidence and resolving conflicts or ambiguities
18 in testimony. *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989). It is the role
19 of the trier of fact, not this court, to resolve conflicts in evidence. *Richardson*, 402
20 U.S. at 400. If evidence supports more than one rational interpretation, the Court

1 may not substitute its judgment for that of the Commissioner. *Tackett*, 180 F.3d at
2 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9th 1984). If there is substantial evidence
3 to support the administrative findings, or if there is conflicting evidence that will
4 support a finding of either disability or nondisability, the finding of the
5 Commissioner is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-30 (9th Cir.
6 1987).

7 The ALJ's determinations are supported by the record and free of harmful
8 legal error.

9 CONCLUSION

10 After review the Court finds the ALJ's decision is supported by substantial
11 evidence and free of harmful legal error.

12 IT IS ORDERED:

13 Plaintiff's motion for summary judgment, ECF No. 15, is denied.

14 Defendant's motion for summary judgment, **ECF No. 18**, is **granted**.

15 The District Court Executive is directed to file this Order, provide copies to
16 counsel, enter judgment in favor of defendant and **CLOSE** the file.

17 DATED this 7th day of January, 2016.

18 *S/ James P. Hutton*

19 JAMES P. HUTTON
20 UNITED STATES MAGISTRATE JUDGE