

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JASON MICHAEL SHERWOOD,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

NO: 1:16-CV-3203-TOR

ORDER GRANTING DEFENDANT’S
MOTION FOR SUMMARY
JUDGMENT

BEFORE THE COURT are the parties’ cross-motions for summary judgment (ECF Nos. 13; 14). This Court has reviewed the administrative record and the parties’ completed briefing, and is fully informed. For the reasons discussed below, the Court grants Defendant’s motion and denies Plaintiff’s motion.

JURISDICTION

The Court has jurisdiction over this case pursuant to 42 U.S.C. §§ 405(g), 1383(c)(3).

//

STANDARD OF REVIEW

1
2 A district court's review of a final decision of the Commissioner of Social
3 Security is governed by 42 U.S.C. § 405(g). The scope of review under §405(g) is
4 limited: the Commissioner's decision will be disturbed "only if it is not supported by
5 substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153, 1158–
6 59 (9th Cir. 2012) (citing 42 U.S.C. § 405(g)). "Substantial evidence" means
7 relevant evidence that "a reasonable mind might accept as adequate to support a
8 conclusion." *Id.* at 1159 (quotation and citation omitted). Stated differently,
9 substantial evidence equates to "more than a mere scintilla[,] but less than a
10 preponderance." *Id.* (quotation and citation omitted). In determining whether this
11 standard has been satisfied, a reviewing court must consider the entire record as a
12 whole rather than searching for supporting evidence in isolation. *Id.*

13 In reviewing a denial of benefits, a district court may not substitute its
14 judgment for that of the Commissioner. If the evidence in the record "is susceptible
15 to more than one rational interpretation, [the court] must uphold the ALJ's findings if
16 they are supported by inferences reasonably drawn from the record." *Molina v.*
17 *Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court "may not
18 reverse an ALJ's decision on account of an error that is harmless." *Id.* at 1111. An
19 error is harmless "where it is inconsequential to the [ALJ's] ultimate nondisability
20 determination." *Id.* at 1115 (quotation and citation omitted). The party appealing the

1 ALJ’s decision generally bears the burden of establishing that it was harmed.

2 *Shinseki v. Sanders*, 556 U.S. 396, 409–10 (2009).

3 **FIVE-STEP SEQUENTIAL EVALUATION PROCESS**

4 A claimant must satisfy two conditions to be considered “disabled” within the
5 meaning of the Social Security Act. First, the claimant must be “unable to engage in
6 any substantial gainful activity by reason of any medically determinable physical or
7 mental impairment which can be expected to result in death or which has lasted or can
8 be expected to last for a continuous period of not less than twelve months.” 42 U.S.C.
9 §§ 423(d)(1)(A); 1382c(a)(3)(A). Second, the claimant’s impairment must be “of
10 such severity that he is not only unable to do his previous work[,] but cannot,
11 considering his age, education, and work experience, engage in any other kind of
12 substantial gainful work which exists in the national economy.” 42 U.S.C. §§
13 423(d)(2)(A); 1382c(a)(3)(B).

14 The Commissioner has established a five-step sequential analysis to determine
15 whether a claimant satisfies the above criteria. *See* 20 C.F.R. §§ 404.1520(a)(4)(i)-
16 (v); 416.920(a)(4)(i)-(v). At step one, the Commissioner considers the claimant’s
17 work activity. 20 C.F.R. §§ 404.1520(a)(4)(i); 416.920(a)(4)(i). If the claimant is
18 engaged in “substantial gainful activity,” the Commissioner must find that the
19 claimant is not disabled. 20 C.F.R. §§ 404.1520(b); 416.920(b).

1 If the claimant is not engaged in substantial gainful activities, the analysis
2 proceeds to step two. At this step, the Commissioner considers the severity of the
3 claimant’s impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii); 416.920(a)(4)(ii). If the
4 claimant suffers from “any impairment or combination of impairments which
5 significantly limits [his or her] physical or mental ability to do basic work activities,”
6 the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c); 416.920(c). If the
7 claimant’s impairment does not satisfy this severity threshold, however, the
8 Commissioner must find that the claimant is not disabled. *Id.*

9 At step three, the Commissioner compares the claimant’s impairment to several
10 impairments recognized by the Commissioner to be so severe as to preclude a person
11 from engaging in substantial gainful activity. 20 C.F.R. §§ 404.1520(a)(4)(iii);
12 416.920(a)(4)(iii). If the impairment is as severe or more severe than one of the
13 enumerated impairments, the Commissioner must find the claimant disabled and
14 award benefits. 20 C.F.R. §§ 404.1520(d); 416.920(d).

15 If the severity of the claimant’s impairment does meet or exceed the severity of
16 the enumerated impairments, the Commissioner must pause to assess the claimant’s
17 “residual functional capacity.” Residual functional capacity (“RFC”), defined
18 generally as the claimant’s ability to perform physical and mental work activities on a
19 sustained basis despite his or her limitations (20 C.F.R. §§ 404.1545(a)(1);
20 416.945(a)(1)), is relevant to both the fourth and fifth steps of the analysis.

1 At step four, the Commissioner considers whether, in view of the claimant’s
2 RFC, the claimant is capable of performing work that he or she has performed in the
3 past (“past relevant work”). 20 C.F.R. §§ 404.1520(a)(4)(iv); 416.920(a)(4)(iv). If
4 the claimant is capable of performing past relevant work, the Commissioner must find
5 that the claimant is not disabled. 20 C.F.R. §§ 404.1520(f); 416.920(f). If the
6 claimant is incapable of performing such work, the analysis proceeds to step five.

7 At step five, the Commissioner considers whether, in view of the claimant’s
8 RFC, the claimant is capable of performing other work in the national economy. 20
9 C.F.R. §§ 404.1520(a)(4)(v); 416.920(a)(4)(v). In making this determination, the
10 Commissioner must also consider vocational factors such as the claimant’s age,
11 education, and work experience. *Id.* If the claimant is capable of adjusting to other
12 work, the Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
13 404.1520(g)(1); 416.920(g)(1). If the claimant is not capable of adjusting to other
14 work, the analysis concludes with a finding that the claimant is disabled and is
15 therefore entitled to benefits. *Id.*

16 The claimant bears the burden of proof at steps one through four above. *Bray v.*
17 *Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1222 (9th Cir. 2009). If the analysis
18 proceeds to step five, the burden shifts to the Commissioner to establish that (1) the
19 claimant is capable of performing other work; and (2) such work “exists in significant
20 numbers in the national economy.” 20 CFR §§ 404.1560(c); 416.960(c)(2); *Bray*, 554

1 F.3d at 1222.

2 **ALJ FINDINGS**

3 Plaintiff filed applications for Disability Insurance Benefits and Supplemental
4 Security Income on February 27, 2013. Tr. 20. Plaintiff’s claims were denied
5 initially and upon reconsideration. *Id.* Plaintiff requested a hearing before an ALJ
6 which was held on March 11, 2015. Tr. 20; 39–77. At his hearing, Plaintiff amended
7 the onset date of his disability to November 17, 2012; his date last insured is June 30,
8 2016. Tr. 20. The ALJ rendered a decision denying Plaintiff disability insurance and
9 supplemental security income benefits on June 26, 2015. Tr. 20–30.

10 At step one, the ALJ found that Plaintiff had not engaged in substantial gainful
11 activity since November 17, 2012. Tr. 22. At step two, the ALJ found that Plaintiff
12 had the following severe impairments: “mental impairments variously described as
13 affective disorder/bipolar disorder, anxiety disorder/post-traumatic stress disorder
14 (PTSD), personality disorder, and substance addiction disorder; and joint dysfunction
15 of the left wrist.” *Id.* At step three, the ALJ found that Plaintiff does not have an
16 impairment or combination of impairments that meets or medically equals a listed
17 impairment. Tr. 23. The ALJ then concluded that Plaintiff had the residual
18 functional capacity (“RFC”) to perform light work with additional manipulative
19 limitations, and with the mental capacity to perform simple work consistent with SVP
20 1 or 2 tasks and with additional social limitations. Tr. 25. This capacity prevented

1 Plaintiff from performing his past relevant work. Tr. 29. At step five, the ALJ
2 identified work Plaintiff can perform, such as a cleaner-housekeeping, mail clerk, and
3 assembler-production. Tr. 30. On that basis, the ALJ concluded that Plaintiff was
4 not disabled as defined in the Social Security Act. *Id.*

5 **ISSUES**

6 Plaintiff seeks judicial review of the Commissioner's final decision denying his
7 supplemental security income under Title II and Title XVI of the Social Security Act.

8 Plaintiff raises three issues for the Court's review:

- 9 1. Whether the ALJ erred in finding Plaintiff not credible.
- 10 2. Whether the ALJ erred in weighing the medical and lay witness evidence.
- 11 3. Whether the ALJ erred at step two in assessing all of Plaintiff's severe and
12 non-severe impairments.

13 ECF No. 13 at 5–6. The Court evaluates each issue in turn.

14 **DISCUSSION**

15 **A. Adverse Credibility Finding**

16 Plaintiff faults the ALJ for not crediting his testimony regarding his mental
17 health and physical impairments as disabling. ECF No. 13 at 6–7. Commissioner
18 contends that the ALJ provided clear and convincing reasons for rejecting Plaintiff's
19 testimony and subjective complaints. ECF No. 14 at 3.

1 An ALJ engages in a two-step analysis to determine whether a claimant's
2 testimony regarding subjective pain or symptoms is credible. *Molina*, 674 F.3d at
3 1112. "First, the ALJ must determine whether there is objective medical evidence of
4 an underlying impairment which could reasonably be expected to produce the pain or
5 other symptoms alleged." *Id.* (internal quotation marks omitted). "The claimant is not
6 required to show that [his] impairment could reasonably be expected to cause the
7 severity of the symptom [he] has alleged; [he] need only show that it could reasonably
8 have caused some degree of the symptom." *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th
9 Cir. 2009) (internal quotation marks omitted).

10 Second, "[i]f the claimant meets the first test and there is no evidence of
11 malingering, the ALJ can only reject the claimant's testimony about the severity of the
12 symptoms if [he] gives 'specific, clear and convincing reasons' for the rejection."
13 *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (quoting *Lingenfelter v.*
14 *Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007)). "General findings are insufficient;
15 rather, the ALJ must identify what testimony is not credible and what evidence
16 undermines the claimant's complaints." *Id.* (quoting *Lester v. Chater*, 81 F.3d 821,
17 834 (9th Cir. 1995)); *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) ("[T]he
18 ALJ must make a credibility determination with findings sufficiently specific to
19 permit the court to conclude that the ALJ did not arbitrarily discredit claimant's
20 testimony."). In making an adverse credibility determination, the ALJ may consider,

1 *inter alia*, (1) the claimant’s reputation for truthfulness; (2) inconsistencies in the
2 claimant’s testimony or between his testimony and his conduct; (3) the claimant’s
3 daily living activities; (4) the claimant’s work record; and (5) testimony from
4 physicians or third parties concerning the nature, severity, and effect of the claimant’s
5 condition. *Thomas*, 278 F.3d at 958–59.

6 Here, the ALJ found that the Plaintiff’s medically determinable impairments
7 could reasonably be expected to cause the alleged symptoms, but Plaintiff’s claims
8 concerning the intensity, persistence, and limiting effects of the symptoms were not
9 entirely credible. Tr. 26. The ALJ provided specific, clear, and convincing reasons
10 not to credit Plaintiff’s testimony of the limiting effects of his symptoms.

11 First, the ALJ determined that Plaintiff did not present evidence of a completely
12 disabling mental impairment. Tr. 26. The ALJ cited that Plaintiff had his first
13 reported episode of severe depression in 1991. Tr. 26; 376. In February 2013,
14 Plaintiff reported “things are looking up” and felt better after being sober for 90 days.
15 *Id.* In May 2013, Plaintiff was found to have anger that would cause moderate effects
16 on his ability to work and depression that would have a mild effect on his ability to
17 work. Tr. 26; 404. Yet, Plaintiff alleges that the ALJ “merely cherry-picked a tiny
18 portion of Dr. Barnard’s opinion.” ECF No. 15 at 3. Dr. Barnard did find that
19 Plaintiff’s ability to perform a complete normal work day and work week without
20 interruptions from psychologically based symptoms was severe and his ability to

1 maintain appropriate behavior in a work setting was also severe. Tr. 405. Yet, Dr.
2 Barnard found other basic work activities that were merely mild or moderate, such as
3 Plaintiff's ability to make simple work-related decisions, communicate and perform
4 effectively in a work setting, and perform routine tasks without special supervision.
5 *Id.* Overall, the ALJ completed a thorough review of the record, including the opinion
6 of Dr. Barnard.

7 Additionally, the ALJ noted at the mental status examination in 2013 that
8 Plaintiff had a stable mood on his current medications. Tr. 26; 424. Plaintiff contends
9 that this citation does not constitute substantial evidence that his mental condition was
10 stable on medication. ECF No. 15 at 3. Yet, the ALJ does not merely list this single
11 citation as evidence of Plaintiff's mental state, but also found that Plaintiff did not
12 require recent inpatient psychiatric hospitalization during the pertinent period nor
13 emergent outpatient treatment. Tr. 26. The ALJ noted that Plaintiff appears to be able
14 to function at a stable level. *Id.*

15 In considering the medical records and all other evidence, the ALJ found that
16 while Plaintiff "exhibited some symptoms of medical conditions ... it appears he was
17 able to function at a stable level, which indicates that his allegedly disabling mental
18 symptoms are not as severe as alleged." Tr. 26. The ALJ noted that Plaintiff was
19 independent in self-care and activities of daily living. Tr. 26; 288-89. Plaintiff also
20 did not show significant signs of tangential/circumstantial thought, loose associations,

1 homicidal ideation, excessive paranoia, or excessive hallucinations. Tr. 27. The ALJ
2 determined that the medical record does not support the alleged symptoms of
3 difficulty sleeping on a consistent basis, frequent manic episodes, significant memory
4 loss, disorientation, significant oddities of thought, frequent illogical thinking,
5 pervasive loss of interest in things, or violent levels of constant hostility. *Id.*

6 The ALJ noted that the file also does not show consistently low GAF scores.
7 Tr. 27. The ALJ later gave the GAF scores little weight as they can often vary due to
8 different clinicians and subjective factors, such as unemployment, household issues,
9 or legal problems. Tr. 28. Plaintiff argues that the ALJ took a prejudicial approach to
10 analyzing this evidence because the ALJ allegedly rejected his testimony due to these
11 GAF scores but then determined that the GAF scores do not carry significant weight.
12 ECF No. 15 at 5. Yet, Plaintiff is incorrect that the ALJ found his testimony not
13 credible due to the GAF scores. This one sentence regarding the GAF scores was
14 encompassed by pages of medical citations and reasoning. The ALJ merely noted that
15 the GAF scores were of relevance and later gave them little weight, which does not
16 constitute prejudice. *Id.*

17 These numerous citations to the record regarding Plaintiff's mental health
18 illustrates that the ALJ did provide specific, clear, and convincing reasons for finding
19 that Plaintiff's testimony regarding the severity of his mental health is not entirely
20 credible. Tr. 26.

1 Second, as to Plaintiff’s joint dysfunction of the left wrist, the ALJ found that
2 the objective medical record does not indicate that the Plaintiff had significant
3 functional limitations. Tr. 27. On May 2013, Plaintiff reported that he had pain in his
4 left wrist for seven years. Tr. 27; 421. On June 2013, a review of his original MRI in
5 2007 showed a cyst and possible tear of the joint. Yet, the Plaintiff “continued to
6 work in construction for the next 5 years.” Tr. 27; 472. At this office visit in June
7 2013, Plaintiff was found to have the same range of motion in his left and right wrists
8 and an x-ray revealed “[n]ormal left wrist x-rays.” Tr. 27; 475. In July 2013, Plaintiff
9 was found to have normal range of motion. Tr. 27; 847. In January 2015, the Plaintiff
10 stated that after his left wrist surgery, he still had pain where severity was level 1 out
11 of 6. Tr. 27; 958.

12 Plaintiff again contends that the ALJ conducted a “cherry-picked review of the
13 record.” ECF No. 15 at 6. Yet, the ALJ reviewed the objective medical evidence and
14 provided specific, clear, and convincing reasons for the finding that Plaintiff’s
15 physical impairment is not as severe as alleged. Tr. 27. This Court finds that the ALJ
16 did not err in determining that Plaintiff’s testimony was not credible due to the record
17 and objective medical evidence.

18 Overall, the ALJ’s decision provided specific, clear, and convincing reasons
19 supported by substantial evidence sufficient for this Court to conclude that the adverse
20 credibility determination was not arbitrary.

1 **B. Medical Opinion Evidence**

2 Plaintiff faults the ALJ for discounting the medical opinions of Dr. Barnard, Dr.
3 Carstens, and Dr. Lu; and the lay witness testimony of Ms. Studer. ECF No. 13 at 12–
4 18. The Commissioner contends that the ALJ properly considered and addressed the
5 medical evidence of the record. ECF No. 14 at 12.

6 There are three types of physicians: “(1) those who treat the claimant (treating
7 physicians); (2) those who examine but do not treat the claimant (examining
8 physicians); and (3) those who neither examine nor treat the claimant but who review
9 the claimant’s file (nonexamining or reviewing physicians).” *Holohan v. Massanari*,
10 246 F.3d 1195, 1201-02 (9th Cir. 2001) (citations omitted). Generally, the opinion of
11 a treating physician carries more weight than the opinion of an examining physician,
12 and the opinion of an examining physician carries more weight than the opinion of a
13 reviewing physician. *Id.* at 1202. In addition, the Commissioner’s regulations give
14 more weight to opinions supported by reasoned explanations than to opinions that are
15 not, and to the opinions of specialists on matters relating to their area of expertise over
16 the opinions of non-specialists. *Id.* (citations omitted).

17 If a treating or examining physician’s opinion is uncontradicted, an ALJ may
18 reject it only by offering “clear and convincing reasons that are supported by
19 substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005)
20 (citing *Lester*, 81 F.3d at 830–31). “If a treating or examining doctor’s opinion is

1 contradicted by another doctor’s opinion, an ALJ may only reject it by providing
2 specific and legitimate reasons that are supported by substantial evidence.” *Id.* (citing
3 *Lester*, 81 F.3d at 830–31). Regardless of the source, an ALJ need not accept a
4 physician’s opinion that is “brief, conclusory, and inadequately supported by clinical
5 findings.” *Bray*, 554 F.3d at 1228 (quotation and citation omitted).

6 “Where an ALJ does not explicitly reject a medical opinion or set forth
7 specific, legitimate reasons for crediting one medical opinion over another, he errs.”
8 *Garrison v. Colvin*, 759 F.3d 995, 1012 (9th Cir. 2014). “In other words, an ALJ errs
9 when he rejects a medical opinion or assigns it little weight while doing nothing more
10 than ignoring it, asserting without explanation that another medical opinion is more
11 persuasive, or criticizing it with boilerplate language that fails to offer a substantive
12 basis for his conclusion.” *Id.* at 1012–13. That said, the ALJ is not required to recite
13 any magic words to properly reject a medical opinion. *Magallanes v. Bowen*, 881
14 F.2d 747, 755 (9th Cir. 1989) (holding that the Court may draw reasonable inferences
15 when appropriate). “An ALJ can satisfy the ‘substantial evidence’ requirement by
16 setting out a detailed and thorough summary of the facts and conflicting clinical
17 evidence, stating his interpretation thereof, and making findings.” *Garrison*, 759 F.3d
18 at 1012 (quoting *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998)).

19 //

20 //

1 **1. Dr. Barnard, examining psychologist, and Dr. Carstens, reviewing**

2 Plaintiff contends that the ALJ erred in rejecting the psychological opinion of
3 Dr. Barnard. ECF No. 13 at 12. The ALJ gave little weight to the opinion of Dr.
4 Barnard, as “the objective medical evidence does not support finding the severity of
5 conditions opined by Dr. Barnard.” Tr. 28. Plaintiff contends that the ALJ did not
6 offer a further explanation, citation to the record, or discussion of Dr. Barnard’s
7 findings. ECF No. 13 at 12–13. Yet, the ALJ thoroughly analyzed Dr. Barnard’s
8 findings as outlined above. The ALJ cited Dr. Barnard’s findings that Plaintiff’s
9 mental health symptoms would only mildly or moderately impede a daily work life.
10 Tr. 26; 404. In looking at the medical evidence, including Dr. Barnard’s findings, the
11 ALJ determined that Plaintiff’s medical impairments were not severe. Tr. 27.
12 Therefore, the ALJ does discuss and consider Dr. Barnard’s findings before
13 determining that his opinion deserves little weight. This Court finds that the ALJ
14 properly considered the opinion of Dr. Barnard and did not err in giving it little
15 weight, as it was not supported by objective medical evidence.

16 Plaintiff also argues that the ALJ ignored Dr. Carstens’ review and agreement
17 with Dr. Barnard’s evaluation. ECF No. 13 at 13; Tr. 436; 446. While Plaintiff is
18 correct that the ALJ did not address Dr. Carstens’ opinion, it was merely a review of
19 Dr. Barnard’s findings, which the ALJ did address. Dr. Carstens also reviewed the
20 Yakima Neighborhood Health assessment, but concluded the same findings as Dr.

1 Barnard. Tr. 446. Therefore, even though the ALJ did not review the findings of Dr.
2 Carstens, this Court determines that any failure to address the opinion of Dr. Carstens
3 is harmless error as it is inconsequential to the ALJ's ultimate findings and is
4 repetitive of Dr. Barnard's opinion. *See Molina*, 674 F.3d at 1115.

5 **2. Dr. Lu, treating physician**

6 Plaintiff argues that the ALJ improperly rejected the opinion of Dr. Lu. ECF
7 No. 13 at 16. The ALJ gave little weight to the opinion of Dr. Lu because the
8 objective medical evidence as a whole did not support finding the type of disabling
9 impairments opined by Dr. Lu. Tr. 28. While Dr. Lu is a treating physician and so
10 more weight should be given to his opinion, the ALJ's failure to address this medical
11 opinion is still harmless error. Dr. Lu found on various examinations that Plaintiff
12 sometimes reported depression and anxiety, but no stress, loss of interest, weight
13 change or fatigue. Tr. 907; 911. He reported insomnia on one occasion. Tr. 903. He
14 also reported no depression nor loss of interest, but anxiety, insomnia, and stress on
15 one occasion. Tr. 916. He reported only anxiety on another occasion. Tr. 920. On
16 one occasion he reported having no mental impairments. Tr. 924. These varying
17 findings are inconsequential to the overall medical record, as Plaintiff's self-reporting
18 on his mental impairments carries less weight when the ALJ already determined that
19 Plaintiff's claims of the severity of his impairments were not credible. Therefore, the
20 Court finds that the ALJ's failure to address the findings of Dr. Lu is harmless error as

1 the self-reporting found within the medical opinions of Dr. Lu is inconsequential in
2 regards to the entire objective medical evidence.

3 **3. Ms. Studer, lay witness testimony**

4 Plaintiff contends that the ALJ improperly discounted the testimony of Ms.
5 Studer, Plaintiff's mother. ECF No. 13 at 18. The ALJ stated that Ms. Studer's report
6 must be considered under Social Security Ruling 06-03p to show the severity of
7 Plaintiff's impairments and how they affect his ability to function. Tr. 28. Upon fully
8 considering Ms. Studer's statement and the severity of the impairments, the ALJ gave
9 partial weight inasmuch as it was supported by the overall evidence. *Id.*

10 Competent lay witness testimony "*cannot* be disregarded without comment."
11 *Molina*, 674 F.3d at 1114 (quoting *Nguyen v. Chater*, 100 F.3d 1462, 1467 (9th Cir.
12 1996)). The ALJ must give reasons that are germane to each witness. *Id.* (quoting
13 *Dodrill v. Shalala*, 12 F.3d 915, 919 (9th Cir. 1993)). In *Molina*, the ALJ referenced
14 the third party statements, but did not provide a reason for discounting the testimony.
15 *Id.* at 1114–15. The court still determined that the failure to disregard without a
16 comment was harmless error. *Id.* Here, the ALJ did provide a germane reason to give
17 partial weight to Ms. Studer's report. The ALJ stated, "The undersigned has fully
18 considered the statement by the claimant's mother ... in assessing the severity of the
19 claimant's impairments and determining his residual functional capacity herein, and
20 gives it partial weight inasmuch as it is supported by the overall evidence." Tr. 28.

1 Therefore, the ALJ did not find that Ms. Studer’s testimony was not credible, unlike
2 *Molina*, but that her testimony should be considered alongside that of the overall
3 evidence. *Molina*, 674 F.3d at 1115.

4 Even if the ALJ did err in not providing a fuller explanation for the partial
5 weight, it would be harmless error. According to the Ninth Circuit, “[A]n ALJ’s
6 failure to comment upon lay witness testimony is harmless where ‘the same evidence
7 that the ALJ referred to in discrediting [the claimant’s] claims also discredits [the lay
8 witness’s] claims.’” *Id.* at 1122 (quoting *Buckner v. Astrue*, 646 F.3d 549, 560 (8th
9 Cir. 2011)). Here, the ALJ discredited Plaintiff’s testimony, which is the same
10 evidence offered by Ms. Studer. Ms. Studer noted that Plaintiff is limited in his work
11 due to his wrist and mental issues. Tr. 269. She stated that he complains that he has
12 difficulty sleeping. Tr. 270. Yet, he is able to go out daily, cook for himself, and ride
13 his bike. Tr. 271–73. The ALJ noted Plaintiff’s daily living activities in the findings.
14 Tr. 26. Ms. Studer also stated that Plaintiff is difficult to get along with if he is not
15 medicated. Tr. 274. This report is consistent with Plaintiff’s testimony regarding his
16 mental and physical impairments, which the ALJ found not credible. The same
17 objective medical evidence the ALJ referred to in discrediting Plaintiff would also
18 discredit Ms. Studer, and this Court finds that the alleged err is harmless.

19 //

20 //

1 **C. Step Two Analysis**

2 Plaintiff next argues that the ALJ erred by only finding that Plaintiff had severe
3 mental impairments and joint dysfunction of the left wrist, but not severe respiratory
4 and pain disorders. ECF No. 13 at 18–19.

5 The step two inquiry is merely a *de minimis* screening device intended to
6 dispose of groundless claims. *Edlund v. Massanari*, 253 F.3d 1152, 1158 (9th Cir.
7 2001) (quotation and citation omitted). It does not result in a finding of disability if a
8 particular impairment is found to be “severe” within the meaning of the
9 Commissioner’s regulations. *See Hoopai v. Astrue*, 499 F.3d 1071, 1075 (9th Cir.
10 2007). An impairment, to be considered severe, must significantly limit an
11 individual’s ability to perform basic work activities. 20 C.F.R. § 416.920(c). An
12 impairment must be established by medical evidence consisting of signs, symptoms,
13 and laboratory findings, and “under no circumstances may the existence of an
14 impairment be established on the basis of symptoms alone.” *Ukolov v. Barnhart*, 420
15 F.3d 1002, 1005 (9th Cir. 2005) (citing SSR 96–4p, 1996 WL 374187 (July 2, 1996))
16 (defining “symptoms” as an “individual’s own perception or description of the impact
17 of” the impairment). A plaintiff bears the burden of proving that his or her medically
18 determinable impairment or its symptoms affect his or her ability to perform basic
19 work activities. *Edlund*, 253 F.3d at 1159–60.

1 Here, the ALJ found that Plaintiff had the severe impairments of affective
2 disorder/bipolar disorder, anxiety disorder/post-traumatic stress disorder, personality
3 disorder, and substance disorder. Tr. 22. The ALJ also found that Plaintiff had the
4 severe impairment of joint dysfunction of the left wrist. *Id.* The ALJ determined that
5 these impairments were severe because “they more than minimally limit the
6 claimant’s ability to perform basic work related activity.” *Id.*

7 Plaintiff contends that the ALJ should have found Dr. Lu’s diagnosis of COPD
8 and asthma¹ severe. ECF No. 13 at 19. Dr. Lu merely noted in the history of the
9 present illness (HPI) that Plaintiff had asthma and COPD. Plaintiff’s chief complaint
10 was hand joint pain. Tr. 875. In a medical report, Dr. Lu wrote COPD under
11 diagnoses. Tr. 898. Additionally, Plaintiff argues the ALJ failed to accept or reject
12 the diagnosis of a pain disorder with psychological factors and a general medical
13 condition given by Dr. Barnard. Tr. 404. Under a list of diagnoses, Dr. Barnard noted
14 a pain disorder, but did not further address it in his medical opinion. Rather, Dr.
15 Barnard focused on Plaintiff’s ability to work and the severity of his anger and
16 depression, which was addressed by the ALJ. Tr. 405.

17 The ALJ’s failure to address the respiratory and general pain disorder constitute
18 harmless err, as there is no evidence in the opinions of Dr. Lu or Dr. Barnard that such
19

20 ¹ Dr. Lu noted that “patient is actively smoking.” Tr. 878.

1 diagnoses limited Plaintiff's ability to perform basic work functions. *See* 20 C.F.R. §
2 416.920(c). Plaintiff misconstrues the purpose of step two and, having passed through
3 the step two window, Plaintiff cannot show he was harmed by the ALJ's step two
4 findings. The ALJ reviewed all medical evidence and the record throughout the
5 opinion and found most of Plaintiff's impairments severe. Tr. 22. This Court finds
6 that even if the ALJ erred in not addressing these two diagnoses, this error was
7 harmless.

8 **ACCORDINGLY, IT IS ORDERED:**

- 9 1. Plaintiff's Motion for Summary Judgment (ECF No. 13) is **DENIED**.
10 2. Defendant's Motion for Summary Judgment (ECF No. 14) is **GRANTED**.

11 The District Court Executive is directed to enter this Order and judgment for the
12 Defendant, furnish copies to counsel, and **CLOSE** the file.

13 **DATED** September 28, 2017.



16
17
18
19
20

A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE
Chief United States District Judge