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FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Jul 29, 2019**

SEAN F. MCAVOY, CLERK

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON**

MICHAEL W.,<sup>1</sup>  
Plaintiff,  
  
vs.  
  
ANDREW M. SAUL,  
COMMISSIONER OF SOCIAL  
SECURITY,<sup>2</sup>  
Defendant.

No. 1:18-cv-03211-MKD  
  
ORDER DENYING PLAINTIFF’S  
MOTION FOR SUMMARY  
JUDGMENT AND GRANTING  
DEFENDANT’S MOTION FOR  
SUMMARY JUDGMENT  
  
ECF Nos. 14, 16

Before the Court are the parties’ cross-motions for summary judgment. ECF Nos. 14, 16. The parties consented to proceed before a magistrate judge. ECF No.

<sup>1</sup> To protect the privacy of plaintiffs in social security cases, the undersigned identifies them only by their first names and the initial of their last names.

<sup>2</sup> Andrew M. Saul is now the Commissioner of the Social Security Administration. Accordingly, the Court substitutes Andrew M. Saul as the Defendant and directs the Clerk to update the docket sheet. See Fed. R. Civ. P. 25(d).

1 6. The Court, having reviewed the administrative record and the parties' briefing,  
2 is fully informed. For the reasons discussed below, the Court denies Plaintiff's  
3 Motion, ECF No. 14, and grants Defendant's Motion, ECF No. 16.

#### 4 **JURISDICTION**

5 The Court has jurisdiction over this case pursuant to 42 U.S.C. §§ 405(g);  
6 1383(c)(3).

#### 7 **STANDARD OF REVIEW**

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

19 In reviewing a denial of benefits, a district court may not substitute its  
20 judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152,

1 1156 (9th Cir. 2001). If the evidence in the record “is susceptible to more than one  
2 rational interpretation, [the court] must uphold the ALJ’s findings if they are  
3 supported by inferences reasonably drawn from the record.” *Molina v. Astrue*, 674  
4 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court “may not reverse an  
5 ALJ’s decision on account of an error that is harmless.” *Id.* An error is harmless  
6 “where it is inconsequential to the [ALJ’s] ultimate nondisability determination.”  
7 *Id.* at 1115 (quotation and citation omitted). The party appealing the ALJ’s  
8 decision generally bears the burden of establishing that it was harmed. *Shinseki v.*  
9 *Sanders*, 556 U.S. 396, 409-10 (2009).

#### 10 **FIVE-STEP EVALUATION PROCESS**

11 A claimant must satisfy two conditions to be considered “disabled” within  
12 the meaning of the Social Security Act. First, the claimant must be “unable to  
13 engage in any substantial gainful activity by reason of any medically determinable  
14 physical or mental impairment which can be expected to result in death or which  
15 has lasted or can be expected to last for a continuous period of not less than twelve  
16 months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). Second, the claimant’s  
17 impairment must be “of such severity that he is not only unable to do his previous  
18 work[,] but cannot, considering his age, education, and work experience, engage in  
19 any other kind of substantial gainful work which exists in the national economy.”  
20 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).

1 The Commissioner has established a five-step sequential analysis to  
2 determine whether a claimant satisfies the above criteria. See 20 C.F.R. §§  
3 404.1520(a)(4)(i)-(v), 416.920(a)(4)(i)-(v). At step one, the Commissioner  
4 considers the claimant’s work activity. 20 C.F.R. §§ 404.1520(a)(4)(i),  
5 416.920(a)(4)(i). If the claimant is engaged in “substantial gainful activity,” the  
6 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§  
7 404.1520(b), 416.920(b).

8 If the claimant is not engaged in substantial gainful activity, the analysis  
9 proceeds to step two. At this step, the Commissioner considers the severity of the  
10 claimant’s impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). If the  
11 claimant suffers from “any impairment or combination of impairments which  
12 significantly limits [his or her] physical or mental ability to do basic work  
13 activities,” the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c),  
14 416.920(c). If the claimant’s impairment does not satisfy this severity threshold,  
15 however, the Commissioner must find that the claimant is not disabled. 20 C.F.R.  
16 §§ 404.1520(c), 416.920(c).

17 At step three, the Commissioner compares the claimant’s impairment to  
18 severe impairments recognized by the Commissioner to be so severe as to preclude  
19 a person from engaging in substantial gainful activity. 20 C.F.R. §§  
20 404.1520(a)(4)(iii), 416.920(a)(4)(iii). If the impairment is as severe or more

1 severe than one of the enumerated impairments, the Commissioner must find the  
2 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d), 416.920(d).

3 If the severity of the claimant's impairment does not meet or exceed the  
4 severity of the enumerated impairments, the Commissioner must pause to assess  
5 the claimant's "residual functional capacity." Residual functional capacity (RFC),  
6 defined generally as the claimant's ability to perform physical and mental work  
7 activities on a sustained basis despite his or her limitations, 20 C.F.R. §§  
8 404.1545(a)(1), 416.945(a)(1), is relevant to both the fourth and fifth steps of the  
9 analysis.

10 At step four, the Commissioner considers whether, in view of the claimant's  
11 RFC, the claimant is capable of performing work that he or she has performed in  
12 the past (past relevant work). 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv).

13 If the claimant is capable of performing past relevant work, the Commissioner  
14 must find that the claimant is not disabled. 20 C.F.R. §§ 404.1520(f), 416.920(f).  
15 If the claimant is incapable of performing such work, the analysis proceeds to step  
16 five.

17 At step five, the Commissioner considers whether, in view of the claimant's  
18 RFC, the claimant is capable of performing other work in the national economy.  
19 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). In making this determination,  
20 the Commissioner must also consider vocational factors such as the claimant's age,



1 At step one, the ALJ found Plaintiff had not engaged in substantial gainful  
2 activity since July 31, 2013, the alleged onset date. Tr. 19. At step two, the ALJ  
3 found Plaintiff had the following severe impairments: chronic obstructive  
4 pulmonary disease (COPD), hearing loss correctible with hearing aid, degenerative  
5 disc disease, depression, anxiety, and a learning disorder. Id. At step three, the  
6 ALJ found Plaintiff did not have an impairment or combination of impairments  
7 that meets or medically equals the severity of a listed impairment. Tr. 20. The  
8 ALJ then found Plaintiff had the RFC to perform light work with the following  
9 limitations:

10 [Plaintiff] can occasionally climb, and can frequently stoop, kneel, crouch  
11 and crawl. He can frequently reach overhead, and can frequently handle,  
12 finger and feel. He can perform work in which concentrated exposure to  
13 respiratory irritants is not present. Until recommended hearing aids are  
14 acquired and used, [Plaintiff] can perform work in which hearing is required  
15 no more tha[n] occasionally and in which hazards are not present. In order  
16 to meet ordinary and reasonable employer expectations regarding  
17 attendance, production and work place behavior, [Plaintiff] can understand,  
18 remember and carry out unskilled, routine and repetitive work that can be  
19 learned by demonstration, and in which tasks to be performed are  
20 predetermined by the employer. He can cope with occasional work setting  
change and occasional interaction with supervisors. He can work in  
proximity to coworkers, but not in a team or cooperative effort. He can  
perform work that does not require interaction with the general public as an  
essential element of the job, but occasional incidental contact with the  
general public is not precluded.

Tr. 22.

At step four, the ALJ found Plaintiff was unable to perform past relevant  
work. Tr. 27. At step five, the ALJ found that, considering Plaintiff's age,

1 education, work experience, RFC, and testimony from a vocational expert, there  
2 were other jobs that existed in significant numbers in the national economy that  
3 Plaintiff could perform, such as cleaner housekeeping, marker, and production  
4 assembler. Tr. 28. The ALJ concluded Plaintiff was not under a disability, as  
5 defined in the Social Security Act, from July 31, 2013 through December 18, 2017,  
6 the date of the ALJ's decision. Tr. 29.

7 On August 31, 2018, the Appeals Council denied review, Tr. 1-6, making  
8 the ALJ's decision the Commissioner's final decision for purposes of judicial  
9 review. See 42 U.S.C. § 1383(c)(3).

## 10 ISSUES

11 Plaintiff seeks judicial review of the Commissioner's final decision denying  
12 him disability insurance benefits under Title II and supplemental security income  
13 benefits under Title XVI of the Social Security Act. Plaintiff raises the following  
14 issues for this Court's review:

- 15 1. Whether the ALJ properly evaluated Plaintiff's symptom testimony;
- 16 2. Whether the ALJ properly evaluated lay witness evidence; and
- 17 3. Whether the ALJ properly considered the medical opinion evidence.

18 ECF No. 14 at 1.



1 **DISCUSSION**

2 **A. Plaintiff’s Symptom Testimony**

3 Plaintiff contends the ALJ failed to rely on clear and convincing reasons to  
4 discount his symptom testimony. ECF No. 14 at 3-12.

5 An ALJ engages in a two-step analysis to determine whether to discount a  
6 claimant’s testimony regarding subjective symptoms. SSR 16-3p, 2016 WL  
7 1119029, at \*2. “First, the ALJ must determine whether there is objective medical  
8 evidence of an underlying impairment which could reasonably be expected to  
9 produce the pain or other symptoms alleged.” *Molina*, 674 F.3d at 1112 (quotation  
10 marks omitted). “The claimant is not required to show that [the claimant’s]  
11 impairment could reasonably be expected to cause the severity of the symptom [the  
12 claimant] has alleged; [the claimant] need only show that it could reasonably have  
13 caused some degree of the symptom.” *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th  
14 Cir. 2009).

15 Second, “[i]f the claimant meets the first test and there is no evidence of  
16 malingering, the ALJ can only reject the claimant’s testimony about the severity of  
17 the symptoms if [the ALJ] gives ‘specific, clear and convincing reasons’ for the  
18 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (citations  
19 omitted). General findings are insufficient; rather, the ALJ must identify what  
20 symptom claims are being discounted and what evidence undermines these claims.

1 Id. (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995)); *Thomas v.*  
2 *Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (requiring the ALJ to sufficiently  
3 explain why it discounted claimant’s symptom claims). “The clear and convincing  
4 [evidence] standard is the most demanding required in Social Security cases.”  
5 *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v. Comm’r*  
6 *of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).

7 Factors to be considered in evaluating the intensity, persistence, and limiting  
8 effects of a claimant’s symptoms include: 1) daily activities; 2) the location,  
9 duration, frequency, and intensity of pain or other symptoms; 3) factors that  
10 precipitate and aggravate the symptoms; 4) the type, dosage, effectiveness, and  
11 side effects of any medication an individual takes or has taken to alleviate pain or  
12 other symptoms; 5) treatment, other than medication, an individual receives or has  
13 received for relief of pain or other symptoms; 6) any measures other than treatment  
14 an individual uses or has used to relieve pain or other symptoms; and 7) any other  
15 factors concerning an individual’s functional limitations and restrictions due to  
16 pain or other symptoms. SSR 16-3p, 2016 WL 1119029, at \*7; 20 C.F.R.  
17 §§ 404.1529(c), 416.929(c). The ALJ is instructed to “consider all of the evidence  
18 in an individual’s record,” “to determine how symptoms limit ability to perform  
19 work-related activities.” SSR 16-3p, 2016 WL 1119029, at \*2.

1 The ALJ found that Plaintiff's impairments could reasonably be expected to  
2 cause the alleged symptoms; however, Plaintiff's statements concerning the  
3 intensity, persistence, and limiting effects of those symptoms were not entirely  
4 consistent with the evidence. Tr. 23.

5 1. Failure to Follow Treatment Recommendations

6 The ALJ found Plaintiff's symptom testimony was inconsistent with his  
7 failure to follow treatment recommendations. Tr. 24. "[I]n order to get benefits,  
8 an individual must follow treatment prescribed by his or her physician if the  
9 treatment can restore the ability to work, unless the individual has an acceptable  
10 reason for failing to follow the prescribed treatment." *Orn v. Astrue*, 495 F.3d 625,  
11 636-37 (9th Cir. 2007). "A claimant's subjective symptom testimony may be  
12 undermined by an unexplained, or inadequately explained, failure to . . . follow a  
13 prescribed course of treatment." *Trevizo v. Berryhill*, 871 F.3d 664, 679 (9th Cir.  
14 2017) (citations omitted). Social Security Ruling 16-3p instructs that an ALJ "will  
15 not find an individual's symptoms inconsistent with the evidence in the record on  
16 this basis without considering possible reasons he or she may not comply with  
17 treatment or seek treatment consistent with the degree of his or her complaints."  
18 SSR 16-3p, 2016 WL 1119029, at \*8. Acceptable reasons for failing to follow  
19 prescribed treatment include the treatment being contrary to the claimant's  
20 religion, the fact that similar treatment has been tried in the past with unsuccessful

1 results, the recommended treatment being of great magnitude or unusual nature, or  
2 that the treatment would involve amputation of an extremity. 20 C.F.R. §§  
3 404.1530, 416.930.

4 Here, the ALJ noted that Plaintiff was repeatedly counseled to obtain  
5 hearing aids to correct his hearing impairment. Tr. 24; see Tr. 295 (January 15,  
6 2015: hearing aid amplification recommended by treating ENT specialist); Tr. 330  
7 (February 9, 2016: treating ENT specialist opined bilateral hearing aids would be  
8 “the best solution for his hearing” and “had a long discussion about the need for  
9 amplification” with Plaintiff). Plaintiff declined to obtain hearing aids because he  
10 feared they would cause further damage to his ears. Tr. 43, 55, 314. The ALJ  
11 considered this reason but found there was no basis in the record to support  
12 Plaintiff’s fear. Tr. 24. Plaintiff speculates that his unsubstantiated fear of further  
13 damage to his ears is attributable to his diagnoses of learning disorder and anxiety.  
14 ECF No. 14 at 6. However, there is similarly no evidence in the record to support  
15 this proposed justification. In the absence of a good reason for failing to obtain the  
16 hearing aids that were repeatedly recommended to him, the ALJ reasonably  
17 concluded that Plaintiff’s failure to follow treatment recommendation undermined  
18 the extent of his alleged allegations. Tr. 24. This was a clear and convincing  
19 reason to give less weight to Plaintiff’s symptom testimony.

1           2. Conservative Treatment

2           The ALJ found Plaintiff’s symptom testimony was inconsistent with his  
3 record of receiving conservative treatment. Tr. 25. Evidence of “conservative  
4 treatment” is sufficient to discount a claimant’s testimony regarding the severity of  
5 an impairment. *Parra v. Astrue*, 481 F.3d 742, 751 (9th Cir. 2007) (citing *Johnson*  
6 *v. Shalala*, 60 F.3d 1428, 1434 (9th Cir. 1995) (treating ailments with an over-the-  
7 counter pain medication is evidence of conservative treatment sufficient to  
8 discount a claimant’s testimony regarding the severity of an impairment)); see also  
9 *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008) (holding that the ALJ  
10 permissibly inferred that the claimant’s “pain was not as all-disabling as he  
11 reported in light of the fact that he did not seek an aggressive treatment program”  
12 and “responded favorably to conservative treatment including physical therapy and  
13 the use of anti-inflammatory medication, a transcutaneous electrical nerve  
14 stimulation unit, and a lumbosacral corset”).

15           Here, the ALJ noted that despite Plaintiff’s allegations of disabling back  
16 pain, Plaintiff sought only chiropractic treatment for his back. Tr. 24-25; compare  
17 Tr. 60 (Plaintiff testified he experienced severe back pain every two to three  
18 weeks, could not sit or stand for very long, and could not bend over or twist his  
19 back) with Tr. 57 (Plaintiff testified that he sees the chiropractor when he throws  
20

1 out his back but did not pursue other treatment, including medication or physical  
2 therapy).

3       Additionally, the ALJ noted that Plaintiff reported experiencing limitations  
4 from depression, anxiety, and panic attacks during the psychiatric consultative  
5 examination. Tr. 25; see Tr. 322. However, the ALJ noted that Plaintiff reported  
6 taking a prescribed anti-anxiety medication to help him sleep but otherwise  
7 reported not receiving other mental health treatment, including counseling or  
8 medication. Tr. 324. Plaintiff suggests that his failure to seek more intensive  
9 mental health treatment attributable to his history of learning disorders. ECF No.  
10 14 at 5. However, Plaintiff identifies no evidence in the record to support this  
11 proposed justification for Plaintiff's conservative treatment. Id. The ALJ  
12 reasonably concluded that Plaintiff's record of conservative treatment was  
13 inconsistent with the level of impairment he alleged. Tr. 24-25. This was a clear  
14 and convincing reason to give less weight to Plaintiff's subjective symptom  
15 reporting.

### 16       3. Inconsistent Symptom Reporting

17       The ALJ found Plaintiff's symptom complaints were rendered less credible  
18 because Plaintiff inconsistently reported his symptoms. Tr. 24-25. In evaluating a  
19 claimant's symptom claims, an ALJ may consider the consistency of an  
20 individual's own statements made in connection with the disability-review process

1 with any other existing statements or conduct under other circumstances. *Smolen*  
2 *v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996). Here, the ALJ noted that Plaintiff  
3 inconsistently reported his physical capacity. Tr. 24-25. During the hearing,  
4 Plaintiff testified he experienced severe back pain every two to three weeks, could  
5 not sit or stand for very long on a daily basis, and could not bend over or twist his  
6 back. Tr. 60. However, during the consultative examination, Plaintiff reported he  
7 was able to be on his feet for three hours at a time, able to sit for two hours at a  
8 time, and could lift 50 pounds once and 25 pounds more frequently. Tr. 314. In  
9 his function report, Plaintiff reported no limitation in sitting and reported being  
10 able to walk for miles without needing to rest. Tr. 218. The ALJ reasonably  
11 concluded that Plaintiff's differential reporting undermined the reliability of his  
12 subjective symptom testimony. Tr. 24-25.

13 Plaintiff challenges the ALJ's conclusion by noting that Plaintiff testified  
14 that his back pain worsened over time, which Plaintiff asserts explains his different  
15 subjective reports over time. ECF No. 14 at 9; see Tr. 60-61 (Plaintiff testified his  
16 back problems started with an accident in junior high and worsened over time); Tr.  
17 313 (Plaintiff reported low back pain had been present for many years and was  
18 gradually getting worse). However, even where evidence is subject to more than  
19 one rational interpretation, the ALJ's conclusion will be upheld. *Burch v.*  
20 *Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005). The Court will only disturb the

1 ALJ's findings if they are not supported by substantial evidence. Hill, 698 F.3d at  
2 1158. Here, the ALJ rationally concluded that the sharp decline in functioning  
3 Plaintiff reported between the consultative examination and Plaintiff's hearing  
4 testimony was attributable to inconsistent reporting rather than evidence of  
5 worsening symptoms supported by the record. Tr. 24-25. Because the ALJ's  
6 interpretation of the evidence is rational, the Court will not disturb it. Hill, 698  
7 F.3d at 1158. This was a clear and convincing reason to give less weight to  
8 Plaintiff's subjective symptom complaints.

#### 9 4. Improvement with Treatment

10 The ALJ found Plaintiff's symptom testimony was inconsistent with his  
11 record of improvement with treatment. Tr. 24-25. The effectiveness of treatment  
12 is a relevant factor in determining the severity of a claimant's symptoms. 20  
13 C.F.R. §§ 404.1529(c)(3), 416.929(c)(3); *Warre v. Comm'r of Soc. Sec. Admin.*,  
14 439 F.3d 1001, 1006 (9th Cir. 2006) (determining that conditions effectively  
15 controlled with medication are not disabling for purposes of determining eligibility  
16 for benefits); *Tommasetti*, 533 F.3d at 1040 (recognizing that a favorable response  
17 to treatment can undermine a claimant's complaints of debilitating pain or other  
18 severe limitations).

19 Here, the ALJ noted that despite Plaintiff's alleged severe limitations from  
20 COPD, Plaintiff reported improvement in his breathing with use of his inhaler. Tr.



1 24; see Tr. 313, 317 (April 15, 2015: Plaintiff reported improved breathing when  
2 he uses his inhalers). The ALJ also noted that despite alleging disabling back pain,  
3 Tr. 60, 64, Plaintiff reported substantial improvement with chiropractic treatment.  
4 Tr. 24-25; see Tr. 379 (May 31, 2016: Plaintiff reported a 95% improvement in  
5 back pain since beginning chiropractic treatment). The ALJ reasonably concluded  
6 that this evidence of improvement was inconsistent with the disabling limitations  
7 Plaintiff alleged. Tr. 24-25. Furthermore, Plaintiff did not challenge this finding.  
8 ECF No. 14 at 3-12. Thus, any challenge to this finding is waived. See *Carmickle*  
9 *v. Comm’r, Soc. Sec. Admin.*, 533 F.3d 1155, 1161 n.2 (9th Cir. 2008) (determining  
10 Court may decline to address on the merits issues not argued with specificity); *Kim*  
11 *v. Kang*, 154 F.3d 996, 1000 (9th Cir. 1998) (the Court may not consider on appeal  
12 issues not “specifically and distinctly argued” in the party’s opening brief).  
13 Plaintiff’s improvement with treatment provided a clear and convincing, and  
14 unchallenged, reason to give less weight to Plaintiff’s subjective symptom  
15 testimony.

#### 16 5. Daily Activities

17 The ALJ found Plaintiff’s symptom complaints were inconsistent with his  
18 daily activities. Tr. 25-26. The ALJ may consider a claimant’s activities that  
19 undermine reported symptoms. *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir.  
20 2001). If a claimant can spend a substantial part of the day engaged in pursuits

1 involving the performance of exertional or non-exertional functions, the ALJ may  
2 find these activities inconsistent with the reported disabling symptoms. *Fair v.*  
3 *Bowen*, 885 F.2d 597, 603 (9th Cir. 1989); *Molina*, 674 F.3d at 1113. “While a  
4 claimant need not vegetate in a dark room in order to be eligible for benefits, the  
5 ALJ may discount a claimant’s symptom claims when the claimant reports  
6 participation in everyday activities indicating capacities that are transferable to a  
7 work setting” or when activities “contradict claims of a totally debilitating  
8 impairment.” *Molina*, 674 F.3d at 1112-13. Additionally, working with an  
9 impairment supports a conclusion that the impairment is not disabling. See *Drouin*  
10 *v. Sullivan*, 966 F.2d 1255, 1258 (9th Cir. 1992); see also *Bray v. Comm’r of Soc.*  
11 *Sec. Admin.*, 554 F.3d 1219, 1227 (9th Cir. 2009) (seeking work despite  
12 impairment supports inference that impairment is not disabling).

13       The ALJ noted Plaintiff testified that his temper prevented him from  
14 working. Tr. 26; see Tr. 31-62, 321. However, the ALJ observed Plaintiff  
15 reported maintaining good relationships with family, friends, and coworkers. Tr.  
16 21, 26; see Tr. 49 (Plaintiff reported going hunting with his friend); Tr. 320-22  
17 (Plaintiff reported socializing regularly with his brother, having a good relationship  
18 with his wife, getting along well with coworkers and supervisors, and socializing  
19 weekly with friends). The ALJ also noted that Plaintiff reported severe limitations  
20 from back pain. Tr. 24. However, the ALJ observed Plaintiff reported performing

1 activities like loading bales of hay into his truck and repairing fences. Tr. 25; see  
2 Tr. 313. Additionally, the ALJ noted Plaintiff testified he experienced life-long  
3 memory and attention issues. Tr. 25; see Tr. 55 (Plaintiff testified he had short-  
4 term memory loss since birth). However, the ALJ observed Plaintiff had been able  
5 to perform semi-skilled work in the past, despite the presence of his memory loss.<sup>3</sup>  
6 Tr. 25; see Tr. 229, 233-34. The ALJ reasonably concluded that these activities  
7 were inconsistent with the level of impairment that Plaintiff alleged. Tr. 25-26.

8 The ALJ also noted Plaintiff reported being the caretaker for his seven-year-  
9 old grandson. Tr. 26; see Tr. 52-53 (Plaintiff testified that childcare duties fell to  
10 him because his wife works full-time). Plaintiff challenges this finding for not  
11 identifying sufficiently specific childcare activities. ECF No. 14 at 8-9. Even if  
12 this specific finding was not sufficiently supported, the ALJ identified other  
13 substantial evidence in support of the conclusion that Plaintiff's activities were  
14 inconsistent with the level of impairment he alleged. See Carmickle, 533 F.3d at

15 \_\_\_\_\_  
16 <sup>3</sup> Plaintiff argues that this conclusion is inconsistent with the ALJ's RFC  
17 formulation, which precluded Plaintiff's return to past work. ECF No. 14 at 8.  
18 The Court interprets the ALJ's conclusion as finding Plaintiff's report about the  
19 long-standing nature of memory impairment to be inconsistent with his past  
20 activities, rather than a conclusion regarding his current mental limitations.

1 1162-63; Molina, 674 F.3d at 1115 (“[S]everal of our cases have held that an  
2 ALJ’s error was harmless where the ALJ provided one or more invalid reasons for  
3 disbelieving a claimant’s testimony, but also provided valid reasons that were  
4 supported by the record.”). Plaintiff’s other daily activities provided clear and  
5 convincing reasons to give less weight to his symptom testimony.

#### 6 6. Inconsistent Medical Evidence

7 The ALJ found Plaintiff’s symptom testimony was inconsistent with the  
8 medical evidence. Tr. 24-25. An ALJ may not discredit a claimant’s symptom  
9 testimony and deny benefits solely because the degree of the symptoms alleged is  
10 not supported by objective medical evidence. Rollins, 261 F.3d at 857; Bunnell v.  
11 Sullivan, 947 F.2d 341, 346-47 (9th Cir. 1991); Fair, 885 F.2d at 601; Burch, 400  
12 F.3d at 680. However, the objective medical evidence is a relevant factor, along  
13 with the medical source’s information about the claimant’s pain or other  
14 symptoms, in determining the severity of a claimant’s symptoms and their  
15 disabling effects. Rollins, 261 F.3d at 857; 20 C.F.R. §§ 404.1529(c)(2),  
16 416.929(c)(2).

1 Here, the ALJ considered Plaintiff's allegations surrounding his different  
2 impairments.<sup>4</sup> Tr. 24-25. First, the ALJ noted that Plaintiff alleged severe  
3 limitations from COPD. Tr. 24; see Tr. 313. However, the ALJ observed that  
4 objective imaging and physical examinations of Plaintiff's chest revealed normal  
5 to mild findings. Tr. 24; see Tr. 280 (November 21, 2013: chest imaging showed  
6 no radiographic abnormalities); Tr. 311, 315 (April 15, 2015: chest imaging  
7 showed findings within normal limits and no radiographic abnormalities; physical  
8 examination revealed increased AP diameter, prolonged expiratory phase, and  
9 scattered rhonchi heard in all lung fields); Tr. 405 (February 8, 2017: chest  
10 imaging showed hyperexpanded lungs consistent with COPD but no acute finding  
11 or significant change).

12 Second, the ALJ considered Plaintiff's allegations that he was unable to  
13 work due to hearing loss. Tr. 24; see Tr. 56 (Plaintiff testified he could not work  
14 due to hearing loss); Tr. 295 (Plaintiff reported having difficulties keeping a job  
15 due to hearing loss). However, the ALJ found that although Plaintiff's treatment  
16 notes documented hearing loss, they did not corroborate the level of impairment

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17  
18 <sup>4</sup> Contrary to Plaintiff's conclusory assertion at ECF No. 14 at 11, the ALJ  
19 identified specific allegations in Plaintiff's symptom reporting before discussing  
20 the lack of supporting medical evidence for that claim. Tr. 24-25.

1 Plaintiff alleged. Tr. 25; see Tr. 295, 303 (January 15, 2015: audiogram showed  
2 significant sensorineural hearing loss bilaterally but Plaintiff retained 88% speech  
3 discrimination bilaterally); Tr. 315 (April 15, 2015: examination showed normal  
4 hearing); Tr. 323 (April 28, 2015: consultative examiner reported having to repeat  
5 some questions when Plaintiff did not hear them); Tr. 343 (February 9, 2016:  
6 hearing essentially unchanged since January 2015 audiogram).

7 Third, the ALJ noted Plaintiff reported significant limitations due to back  
8 pain. Tr. 24; see Tr. 60 (Plaintiff testified he could not sit or stand for very long  
9 and could not bend over or twist his back when experiencing back pain); Tr. 64  
10 (Plaintiff testified on an average day he could stand or sit for 15-20 minutes, then  
11 he would need to adjust himself). However, the ALJ observed that the objective  
12 evidence of Plaintiff's back pain was mild. Tr. 25; see Tr. 312 (April 15, 2015:  
13 imaging showed slight degenerative disc disease at L3-4 and L4-5 but impression  
14 was age-appropriate, slight degenerative changes); Tr. 313, 316 (April 15, 2015:  
15 Plaintiff did not describe sciatic pain or report history of numbness or weakness in  
16 either leg; physical examination largely normal with normal range of motion,  
17 negative straight leg raise bilaterally, minimal spinal tenderness to percussion, no  
18 paravertebral muscle spasm, and negative Waddell's signs).

19 Fourth, the ALJ noted Plaintiff reported longstanding limitations due to  
20 short term memory loss. Tr. 25; see Tr. 55, 57 (Plaintiff alleged limitations from

1 memory loss and having short-term memory loss since birth). However, the ALJ  
2 observed that the level of impairment Plaintiff claimed was inconsistent with  
3 Plaintiff's performance on the mental status examination, which showed some  
4 memory impairment but also noted Plaintiff had smoked marijuana on the morning  
5 of the examination. Tr. 25; see Tr. 323-24 (April 28, 2015: Plaintiff reported  
6 smoking marijuana on the morning of the consultative examination; memory for  
7 past information was in low average range; memory for recent information was  
8 poor; memory for immediate information ranked in the 16th percentile; Plaintiff  
9 was able to recall both presentations of five digits forward and both presentations  
10 of four digits backward; Plaintiff was able to correctly identify the states  
11 surrounding Washington and five large American cities). The ALJ reasonably  
12 concluded that the objective evidence was inconsistent with Plaintiff's subjective  
13 symptom reports. Tr. 24-25.

14 Plaintiff challenges the ALJ's findings by arguing for a different  
15 interpretation of the medical evidence. ECF No. 14 at 11. However, the Court  
16 may not reverse the ALJ's decision based on Plaintiff's disagreement with the  
17 ALJ's interpretation of the record. See *Tommasetti*, 533 F.3d at 1038 (“[W]hen the  
18 evidence is susceptible to more than one rational interpretation” the court will not  
19 reverse the ALJ's decision). Here, the ALJ's finding that specific aspects of  
20 Plaintiff's symptom testimony were inconsistent with the objective medical

1 evidence was based on a rational interpretation of the evidence and is supported by  
2 substantial evidence. Tr. 24-25. The inconsistencies between Plaintiff's symptom  
3 allegations and the objective evidence, coupled with the other reasons articulated,  
4 provided clear and convincing reasons to give less weight to Plaintiff's subjective  
5 symptom testimony.

6 *7. ALJ's Observations*

7 The ALJ found Plaintiff's symptom testimony was inconsistent with the  
8 ALJ's observations at the hearing. Tr. 24. An ALJ's reliance on personal  
9 observations of a claimant at the hearing "has been condemned as 'sit and squirm'  
10 jurisprudence." *Perminster v. Heckler*, 765 F.2d 870, 872 (9th Cir. 1985) (citation  
11 omitted). The practice has generally been met with disapproval and may not form  
12 the sole basis for discounting a claimant's symptom claims. *Orn*, 495 F.3d at 639.

13 Here, the ALJ found Plaintiff "did not demonstrate any difficulties hearing  
14 or speaking during the hearing." Tr. 24. Plaintiff challenges the ALJ's  
15 characterization of events. ECF No. 14 at 10-11. However, the ALJ's  
16 observations of Plaintiff did not form the sole basis for her determination. Tr. 24-  
17 26. Furthermore, even if this finding is error, the error would be harmless because,  
18 as discussed supra, the ALJ listed additional reasons, supported by substantial  
19 evidence, for discrediting Plaintiff's symptom complaints. See *Carmickle*, 533  
20 F.3d at 1162-63; *Molina*, 674 F.3d at 1115 ("[S]everal of our cases have held that



1 an ALJ’s error was harmless where the ALJ provided one or more invalid reasons  
2 for disbelieving a claimant’s testimony, but also provided valid reasons that were  
3 supported by the record.”); *Batson v. Comm’r of Soc. Sec. Admin.*, 359 F.3d 1190,  
4 1197 (9th Cir. 2004) (holding that any error the ALJ committed in asserting one  
5 impermissible reason for claimant’s lack of credibility did not negate the validity  
6 of the ALJ’s ultimate conclusion that the claimant’s testimony was not credible).  
7 Plaintiff is not entitled to remand on this issue.

### 8 **B. Lay Opinion Evidence**

9 Plaintiff challenges the ALJ’s evaluation of lay opinion evidence from  
10 Plaintiff’s wife, De Etta W.<sup>5</sup> ECF No. 14 at 18-19.

11 An ALJ must consider the statement of lay witnesses in determining whether  
12 a claimant is disabled. *Stout v. Comm’r, Soc. Sec. Admin.*, 454 F.3d 1050, 1053  
13 (9th Cir. 2006). Lay witness evidence cannot establish the existence of medically  
14 determinable impairments, but lay witness evidence is “competent evidence” as to  
15 “how an impairment affects [a claimant’s] ability to work.” *Id.*; 20 C.F.R. §§  
16 404.1513(a)(4), 416.913(a)(4); see also *Dodrill v. Shalala*, 12 F.3d 915, 918-19  
17 (9th Cir. 1993) (“[F]riends and family members in a position to observe a  
18 claimant’s symptoms and daily activities are competent to testify as to her

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19  
20 <sup>5</sup> Plaintiff’s wife’s last name is omitted to protect Plaintiff’s privacy.

1 condition.”). If a lay witness statement is rejected, the ALJ ““must give reasons  
2 that are germane to each witness.”” *Nguyen v. Chater*, 100 F.3d 1462, 1467 (9th  
3 Cir. 1996) (citing *Dodrill*, 12 F.3d at 919).

4 Mrs. W. submitted a function report on March 2, 2015, Tr. 221-28, and a  
5 letter on December 27, 2016, Tr. 267, describing Plaintiff’s limitations from  
6 hearing loss and social impairments. The ALJ considered this evidence and gave  
7 Mrs. W.’s opinions little weight. Tr. 26. Because Mrs. W. is a lay witness, the  
8 ALJ was required to give germane reasons to discount her opinion. *Nguyen*, 100  
9 F.3d at 1467.

10 The ALJ found Mrs. W’s statements were “substantially similar” to  
11 Plaintiff’s subjective complaints. Tr. 26. Where the ALJ gives clear and  
12 convincing reasons to reject a claimant’s testimony, and where a lay witness’s  
13 testimony is similar to the claimant’s subjective complaints, the reasons given to  
14 reject the claimant’s testimony are also germane reasons to reject the lay witness  
15 testimony. *Valentine v. Comm’r Soc. Sec. Admin.*, 574 F.3d 685, 694 (9th Cir.  
16 2009); see also *Molina*, 674 F.3d at 1114 (“[I]f the ALJ gives germane reasons for  
17 rejecting testimony by one witness, the ALJ need only point to those reasons when  
18 rejecting similar testimony by a different witness”). Here, many of the answers on  
19 Mrs. W.’s function report are nearly identical to Plaintiff’s function report.  
20 Compare Tr. 213-20 with Tr. 221-28. Indeed, one of Mrs. W.’s responses refers to

1 herself in the third person, mirroring the language Plaintiff used in his own  
2 response to the same question. Compare Tr. 214 with Tr. 222. The ALJ  
3 reasonably concluded that Mrs. W.'s statements were substantially similar to  
4 Plaintiff's complaints. Therefore, the reasons the ALJ gave to give less weight to  
5 Plaintiff's symptom claims, discussed supra, are also germane reasons to give less  
6 weight to Mrs. W.'s statements.

7 1. Inconsistent Medical Evidence

8 The ALJ found Mrs. W's opinion, like Plaintiff's claims, was inconsistent  
9 with the objective medical evidence. Tr. 26. Inconsistency with the medical  
10 evidence is a germane reason for rejecting lay witness testimony. See *Bayliss v.*  
11 *Barnhart*, 427 F.3d 1211, 1218 (9th Cir. 2005); *Lewis v. Apfel*, 236 F.3d 503, 511-  
12 12 (9th Cir. 2001). Although Mrs. W. opined Plaintiff was significantly limited  
13 due to hearing loss, the ALJ observed, as discussed supra, the objective medical  
14 evidence was not consistent with the level of severe limitation alleged. Tr. 26; see  
15 Tr. 295, 303 (January 15, 2015: audiogram showed significant sensorineural  
16 hearing loss bilaterally but Plaintiff retained 88% speech discrimination  
17 bilaterally); Tr. 315 (April 15, 2015: examination showed normal hearing); Tr. 323  
18 (April 28, 2015: consultative examiner reported having to repeat some questions  
19 when Plaintiff did not hear them); Tr. 343 (February 9, 2016: hearing essentially

1 unchanged since January 2015 audiogram). The ALJ reasonably concluded this  
2 evidence was inconsistent with the level of impairment Mrs. W. alleged. Tr. 26.

3 Plaintiff asserts the ALJ erred in making this finding, arguing that  
4 inconsistency with the medical evidence is not a legally sufficient reason to reject  
5 lay opinion evidence. ECF No. 14 at 19 (citing *Diedrich v. Berryhill*, 874 F.3d  
6 634, 640 (9th Cir. 2017)). “An ALJ may reject lay testimony if it is inconsistent  
7 with medical evidence, but not if it is simply unsupported by medical evidence.”  
8 *Carlos L. v. Berryhill*, No. ED CV 17-122-SP, 2019 WL 1433723, at \*11 (C.D.  
9 Cal. March 28, 2019) (emphasis in original); compare *Lewis*, 236 F.3d at 511  
10 (“One reason for which an ALJ may discount lay testimony is that it conflicts with  
11 medical evidence.”) and *Bayliss*, 427 F.3d at 1218 (“Inconsistency with medical  
12 evidence is one [germane] reason [to discredit the testimony of lay witnesses].”) with  
13 *Bruce v. Astrue*, 557 F.3d 1113, 1116 (9th Cir. 2009) (“Nor under our law  
14 could the ALJ discredit her lay testimony as not supported by medical evidence in  
15 the record.”) and *Diedrich*, 874 F.3d at 640 (“[A] lack of support from the ‘overall  
16 medical evidence’ is also not a proper basis for disregarding [the lay witness’]  
17 observations”) (internal citation omitted). Here, the ALJ concluded that Mrs. W.’s  
18 opinion was inconsistent with the medical evidence. Tr. 26. For the reasons  
19 identified supra, this is a reasonable interpretation of the evidence. This was a  
20 germane reason to give Mrs. W.’s opinion less weight.

1           2. Longitudinal Treatment History

2           The ALJ found Mrs. W.’s opinion, like Plaintiff’s symptom claims, was  
3 inconsistent with Plaintiff’s longitudinal treatment history. Tr. 26. Mrs. W.’s  
4 opinion discusses Plaintiff’s limitations from hearing loss. Tr. 221-28, 267. As  
5 discussed supra, the ALJ found Plaintiff’s allegations about limitations from  
6 hearing loss were less credible because of Plaintiff’s failure to follow treatment  
7 recommendations to obtain hearing aids. Tr. 24. A claimant’s failure to follow  
8 treatment recommendations can provide germane reason to discount lay evidence.  
9 Greger v. Barnhart, 464 F.3d 968, 972 (9th Cir. 2006). Although Mrs. W. opined  
10 Plaintiff suffered significant limitations from hearing loss, Tr. 221-28, 267, the  
11 ALJ observed Plaintiff refused to obtain hearing aids despite repeated  
12 recommendations to do so and that Plaintiff did not offer a good reason to fail to  
13 seek this prescribed treatment. Tr. 24; see Tr. 295 (January 15, 2015: hearing aid  
14 amplification recommended by treating ENT specialist); Tr. 330 (February 9,  
15 2016: treating ENT specialist opined bilateral hearing aids would be “the best  
16 solution for his hearing” and “had a long discussion about the need for  
17 amplification” with Plaintiff); Tr. 314 (Plaintiff reported being told hearing aids  
18 will help him but declining to try them because he is afraid they will damage his  
19 ears). The ALJ reasonably concluded that Plaintiff’s treatment history specific to  
20

1 his hearing impairment was inconsistent with Mrs. W.'s opinion. Tr. 26. This was  
2 a germane reason to give less weight to Mrs. W.'s opinion.

### 3 3. Daily Activities

4 The ALJ found Mrs. W.'s opinion, like Plaintiff's symptom claims, was  
5 inconsistent with Plaintiff's daily activities. Tr. 26. Inconsistency with a  
6 claimant's daily activities is a germane reason to reject lay testimony. Carmickle,  
7 533 F.3d at 1163-64; Lewis, 236 F.3d at 512. Mrs. W.'s function report reiterates  
8 Plaintiff's reports that his temper prevented him from working. Tr. 227. However,  
9 the ALJ observed Plaintiff reported social activities and maintaining good  
10 relationships with family, friends, and coworkers. Tr. 21, 26; see Tr. 49 (Plaintiff  
11 reported going hunting with his friend); Tr. 320-22 (Plaintiff reported socializing  
12 regularly with his brother, having a good relationship with his wife, getting along  
13 well with coworkers and supervisors, and socializing weekly with friends). The  
14 ALJ reasonably concluded that Mrs. W.'s opinion was inconsistent with Plaintiff's  
15 activities. Tr. 26. This was a germane reason to give her opinion less weight.

### 16 **C. Medical Opinion Evidence**

17 Plaintiff challenges the ALJ's consideration of the medical opinions of  
18 Guillermo Rubio, M.D.; Leslie Postovit, Ph.D.; and John Robinson, Ph.D. ECF  
19 No. 14 at 13-18.

1           There are three types of physicians: “(1) those who treat the claimant  
2 (treating physicians); (2) those who examine but do not treat the claimant  
3 (examining physicians); and (3) those who neither examine nor treat the claimant  
4 [but who review the claimant’s file] (nonexamining [or reviewing] physicians).”  
5 *Holohan v. Massanari*, 246 F.3d 1195, 1201-02 (9th Cir. 2001) (citations omitted).  
6 Generally, a treating physician’s opinion carries more weight than an examining  
7 physician’s, and an examining physician’s opinion carries more weight than a  
8 reviewing physician’s. *Id.* at 1202. “In addition, the regulations give more weight  
9 to opinions that are explained than to those that are not, and to the opinions of  
10 specialists concerning matters relating to their specialty over that of  
11 nonspecialists.” *Id.* (citations omitted).

12           If a treating or examining physician’s opinion is uncontradicted, the ALJ  
13 may reject it only by offering “clear and convincing reasons that are supported by  
14 substantial evidence.” *Bayliss*, 427 F.3d at 1216. “However, the ALJ need not  
15 accept the opinion of any physician, including a treating physician, if that opinion  
16 is brief, conclusory and inadequately supported by clinical findings.” *Bray*, 554  
17 F.3d at 1228 (internal quotation marks and brackets omitted). “If a treating or  
18 examining doctor’s opinion is contradicted by another doctor’s opinion, an ALJ  
19 may only reject it by providing specific and legitimate reasons that are supported  
20 by substantial evidence.” *Bayliss*, 427 F.3d at 1216 (citing *Lester*, 81 F.3d at 830-

1 831). The opinion of a nonexamining physician may serve as substantial evidence  
2 if it is supported by other independent evidence in the record. *Andrews v. Shalala*,  
3 53 F.3d 1035, 1041 (9th Cir. 1995).

4 1. Dr. Rubio

5 Dr. Rubio reviewed the record on August 11, 2015 and opined Plaintiff  
6 could occasionally lift and/or carry 50 pounds; could frequently lift and/or carry 25  
7 pounds; could stand and/or walk for a total of six hours in an eight-hour workday;  
8 could sit for a total of six hours in an eight-hour workday; had no limitations in  
9 pushing or pulling; could frequently climb ramps and stairs; could occasionally  
10 climb ladders, ropes, and scaffolds; had no limitation in balance; could frequently  
11 stoop, kneel, crouch, and crawl; that Plaintiff must wear hearing aids and avoid  
12 concentrated noise exposure; that Plaintiff must avoid concentrated exposure to  
13 vibration, fumes, odors, dusts, gases, and poor ventilation; and that Plaintiff could  
14 have unlimited exposure to hazards. Tr. 100-02. The ALJ gave this opinion partial  
15 weight. Tr. 26. Because Dr. Rubio's opinion was contradicted by Dr. Drenguis,  
16 Tr. 313-18, the ALJ was required to provide specific and legitimate reason to reject  
17 Dr. Rubio's opinion. *Bayliss*, 427 F.3d at 1216.

18 The ALJ gave greater weight to Dr. Drenguis' opinion than to Dr. Rubio's  
19 opinion because Dr. Rubio's opinion was inconsistent with Dr. Drenguis' opinion  
20 and examination findings. Tr. 26. Relevant factors when evaluating a medical



1 opinion include the amount of relevant evidence that supports the opinion and the  
2 consistency of the medical opinion with the record as a whole. *Lingenfelter v.*  
3 *Astrue*, 504 F.3d 1028, 1042 (9th Cir. 2007); *Orn*, 495 F.3d at 631. Here, Dr.  
4 Drenguis performed a physical examination and documented some abnormal  
5 results on hearing testing, but Dr. Drenguis did not opine Plaintiff had limitations  
6 in working around excessive noise. Tr. 315, 317-18. The ALJ reasonably  
7 concluded that Dr. Rubio’s opinion was inconsistent with this other evidence in the  
8 record. Tr. 26. This was a specific and legitimate reason to give Dr. Rubio’s  
9 opinion less weight.

10 Plaintiff challenges the ALJ’s interpretation of the evidence and argues Dr.  
11 Rubio’s opinion should have been fully credited and incorporated into the RFC in a  
12 specific way. ECF No. 14 at 13-15. Plaintiff essentially invites this Court to  
13 reweigh the evidence. The Court “may neither reweigh the evidence nor substitute  
14 its judgment for that of the Commissioner.” *Blacktongue v. Berryhill*, 229 F. Supp.  
15 3d 1216, 1218 (W.D. Wash. 2017) (citing *Thomas*, 278 F.3d at 954). “[T]he ALJ  
16 is responsible for translating and incorporating clinical findings into a succinct  
17 RFC.” *Rounds v. Comm’r Soc. Sec. Admin.*, 807 F.3d 996, 1006 (9th Cir. 2015).  
18 Where evidence is subject to more than one rational interpretation, the ALJ’s  
19 conclusion will be upheld. *Burch*, 400 F.3d at 679. The Court will only disturb  
20 the ALJ’s findings if they are not supported by substantial evidence. *Hill*, 698 F.3d

1 at 1158. As discussed supra, the ALJ's interpretation of the evidence was  
2 reasonable. Plaintiff is not entitled to remand on these grounds.

3 2. Dr. Postovit and Dr. Robinson

4 Dr. Postovit reviewed the record on May 14, 2015, and opined Plaintiff had  
5 moderate limitation in his ability to understand and remember detailed instructions;  
6 that Plaintiff retained the mental capacity to concentrate on, understand, and  
7 remember routine, repetitive tasks; that Plaintiff had moderate limitation in his  
8 ability to carry out detailed instructions; that Plaintiff had moderate limitation in  
9 his ability to perform activities within a schedule, maintain regular attendance, and  
10 be punctual within customary tolerances; that Plaintiff had moderate limitation in  
11 his ability to work in coordination with or in proximity to others without being  
12 distracted by them; that Plaintiff would have occasional difficulties in maintaining  
13 concentration, persistence, and pace when symptomatic but that he remained  
14 capable of simple or complex tasks with reasonable concentration, persistence, and  
15 pace, attending work within customary tolerances, working within a routine, and  
16 completing a normal workday and workweek; that Plaintiff had moderate  
17 limitation in his ability to interact appropriately with the general public; that  
18 Plaintiff had moderate limitation in his ability to get along with coworkers or peers  
19 without distracting them or exhibiting behavioral extremes; and that Plaintiff  
20 required a setting with little or no public contact and where contact with coworkers

1 is superficial and infrequent. Tr. 88-90. Dr. Robinson reviewed the record on  
2 August 3, 2015 and rendered the same opinions. Tr. 102-04. The ALJ gave both  
3 opinions significant weight. Tr. 27.

4 Plaintiff challenges the ALJ's evaluation of Dr. Postovit's and Dr.  
5 Robinson's opinions by asserting that the way in which the ALJ incorporated these  
6 opinions into the RFC actually constitutes a rejection of the opinions. ECF No. 14  
7 at 15-18. Specifically, Plaintiff argues that the ALJ's finding that Plaintiff was  
8 capable of performing simple tasks on a regular and continuing basis is actually a  
9 rejection of Dr. Postovit's and Dr. Robinson's opinion that Plaintiff had occasional  
10 difficulties in maintaining concentration, persistence, and pace. *Id.* at 15-16.  
11 However, both Dr. Postovit and Dr. Robinson opined that despite Plaintiff's  
12 occasional difficulties in maintaining concentration, persistence, and pace, Plaintiff  
13 remained capable of performing simple or complex tasks with reasonable  
14 concentration, persistence, and pace. Tr. 90, 103. The ALJ credited this evidence  
15 and incorporated it into the RFC by limiting Plaintiff to performing unskilled,  
16 routine, and repetitive work. Tr. 22.

17 “[T]he ALJ is responsible for translating and incorporating clinical findings  
18 into a succinct RFC.” *Rounds*, 807 F.3d at 1006. To the extent the evidence could  
19 be interpreted differently, it is the role of the ALJ to resolve conflicts and  
20 ambiguity in the evidence. See *Morgan v. Comm’r of Soc. Sec. Admin.*, 169 F.3d

1 595, 599-600 (9th Cir. 1999). Where evidence is subject to more than one rational  
2 interpretation, the ALJ's conclusion will be upheld. Burch, 400 F.3d at 679. The  
3 Court will only disturb the ALJ's findings if they are not supported by substantial  
4 evidence. Hill, 698 F.3d at 1158. Plaintiff challenges the ALJ's interpretation of  
5 the evidence, arguing that the ALJ erroneously rejected Dr. Postovit's and Dr.  
6 Robinsons' opinions based on an incorrect interpretation of the evidence.  
7 However, the ALJ actually credited these opinions and reasonably incorporated  
8 their findings into the RFC. Tr. 22, 27. Plaintiff is not entitled to remand on these  
9 grounds.

### 10 CONCLUSION

11 Having reviewed the record and the ALJ's findings, this court concludes the  
12 ALJ's decision is supported by substantial evidence and free of harmful legal error.

13 Accordingly, **IT IS HEREBY ORDERED:**

- 14 1. The District Court Executive is directed to **substitute Andrew M. Saul**  
15 **as the Defendant and update the docket sheet.**
- 16 2. Plaintiff's Motion for Summary Judgment, ECF No. 14, is **DENIED.**
- 17 3. Defendant's Motion for Summary Judgment, ECF No. 16, is  
18 **GRANTED.**
- 19 4. The Court enter **JUDGMENT** in favor of Defendant.

1           The District Court Executive is directed to file this Order, provide copies to  
2 counsel, and **CLOSE THE FILE.**

3           DATED July 29, 2019.

4                           s/Mary K. Dimke  
5                           MARY K. DIMKE  
6                           UNITED STATES MAGISTRATE JUDGE