

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

Jan 27, 2022

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JEFFREY S.,

Plaintiff,

v.

KILOLO KIJAKAZI, ACTING
COMMISSIONER OF SOCIAL
SECURITY,¹

Defendant.

NO: 1:21-CV-03032-LRS

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT

BEFORE THE COURT are the parties' cross motions for summary judgment. ECF Nos. 12, 14. This matter was submitted for consideration without oral argument. Plaintiff is represented by Attorney D. James Tree. Defendant is

¹Kilolo Kijakazi became the Acting Commissioner of Social Security on July 9, 2021. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Kilolo Kijakazi is substituted for Andrew M. Saul as the defendant in this suit. No further action need be taken to continue this suit. *See* 42 U.S.C. § 405(g).

1 represented by Special Assistant United States Attorney David J. Burdett. The
2 Court has reviewed the administrative record, the parties' completed briefing, and
3 is fully informed. For the reasons discussed below, the Court **GRANTS**
4 Defendant's Motion for Summary Judgment, ECF No. 14, and **DENIES** Plaintiff's
5 Motion for Summary Judgment, ECF No. 12.

6 JURISDICTION

7 Plaintiff Jeffrey S.² protectively filed an application for Supplemental
8 Security Income (SSI) on August 31, 2018, Tr. 70, alleging an onset date of
9 September 5, 2016, Tr. 169, due to posttraumatic stress disorder (PTSD), learning
10 disabilities, memory problems, difficulty focusing, paranoia, depression, anxiety,
11 substance abuse, attention hyperactivity disorder (ADHD), and hyperactivity, Tr.
12 208. Plaintiff's applications were denied initially, Tr. 94-97, and upon
13 reconsideration, Tr. 102-08. A hearing before Administrative Law Judge Chris
14 Stuber ("ALJ") was conducted on June 11, 2020. Tr. 38-69. Plaintiff was
15 represented by counsel and testified at the hearing. *Id.* The ALJ also took the
16 testimony of vocational expert Diane Kramer. *Id.* The ALJ entered an unfavorable
17 decision on July 29, 2020. Tr. 20-33. The Appeals Council denied review on
18 January 12, 2021. Tr. 6-10. Therefore, the ALJ's July 29, 2020 decision became

19
20 ²In the interest of protecting Plaintiff's privacy, the Court will use Plaintiff's
21 first name and last initial, and, subsequently, Plaintiff's first name only, throughout
this decision.

1 the final decision of the Commissioner. The matter is now before this Court
2 pursuant to 42 U.S.C. §§ 405(g); 1383(c). ECF No. 1.

3 **BACKGROUND**

4 The facts of the case are set forth in the administrative hearing and
5 transcripts, the ALJ's decision, and the briefs of Plaintiff and the Commissioner.
6 Only the most pertinent facts are summarized here.

7 Plaintiff was 37 years old at the alleged onset date. Tr. 168-69. Prior to his
8 SSI application, Plaintiff was incarcerated. It was during this incarceration that he
9 completed his GED and received a certification in aerospace composites. Tr. 46,
10 209. Plaintiff's reported work history includes jobs as a general laborer at a
11 seafood processing plant, a stocker at a gas station, and a veterinary assistant. Tr.
12 210. At application, he stated that he stopped working on September 5, 2016,
13 because of his conditions. Tr. 208.

14 **STANDARD OF REVIEW**

15 A district court's review of a final decision of the Commissioner of Social
16 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is
17 limited; the Commissioner's decision will be disturbed "only if it is not supported
18 by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153,
19 1158 (9th Cir. 2012). "Substantial evidence" means "relevant evidence that a
20 reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159
21 (quotation and citation omitted). Stated differently, substantial evidence equates to

1 “more than a mere scintilla[,] but less than a preponderance.” *Id.* (quotation and
2 citation omitted). In determining whether the standard has been satisfied, a
3 reviewing court must consider the entire record as a whole rather than searching
4 for supporting evidence in isolation. *Id.*

5 In reviewing a denial of benefits, a district court may not substitute its
6 judgment for that of the Commissioner. “The court will uphold the ALJ’s
7 conclusion when the evidence is susceptible to more than one rational
8 interpretation.” *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008).
9 Further, a district court will not reverse an ALJ’s decision on account of an error
10 that is harmless. *Id.* An error is harmless where it is “inconsequential to the
11 [ALJ’s] ultimate nondisability determination.” *Id.* (quotation and citation omitted).
12 The party appealing the ALJ’s decision generally bears the burden of establishing
13 that it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

14 **FIVE-STEP EVALUATION PROCESS**

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

1 considering his age, education, and work experience, engage in any other kind of
2 substantial gainful work which exists in the national economy.” 42 U.S.C. §
3 423(d)(2)(A).

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

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

18 At step three, the Commissioner compares the claimant’s impairment to
19 severe impairments recognized by the Commissioner to be so severe as to preclude
20 a person from engaging in substantial gainful activity. 20 C.F.R. §
21 416.920(a)(4)(iii). If the impairment is as severe or more severe than one of the

1 enumerated impairments, the Commissioner must find the claimant disabled and
2 award benefits. 20 C.F.R. § 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. §
8 416.945(a)(1), is relevant to both the fourth and fifth steps of the analysis.

9 At step four, the Commissioner considers whether, in view of the claimant's
10 RFC, the claimant is capable of performing work that he or she has performed in
11 the past (past relevant work). 20 C.F.R. § 416.920(a)(4)(iv). If the claimant is
12 capable of performing past relevant work, the Commissioner must find that the
13 claimant is not disabled. 20 C.F.R. § 416.920(f). If the claimant is incapable of
14 performing such work, the analysis proceeds to step five.

15 At step five, the Commissioner considers whether, in view of the claimant's
16 RFC, the claimant is capable of performing other work in the national economy.
17 20 C.F.R. § 416.920(a)(4)(v). In making this determination, the Commissioner
18 must also consider vocational factors such as the claimant's age,
19 education and past work experience. 20 C.F.R. § 416.920(a)(4)(v). If the claimant
20 is capable of adjusting to other work, the Commissioner must find that the claimant
21 is not disabled. 20 C.F.R. § 416.920(g)(1). If the claimant is not capable of

1 adjusting to other work, analysis concludes with a finding that the claimant is
2 disabled and is therefore entitled to benefits. 20 C.F.R. § 416.920(g)(1).

3 The claimant bears the burden of proof at steps one through four. *Tackett v.*
4 *Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to step five,
5 the burden shifts to the Commissioner to establish that (1) the claimant is capable
6 of performing other work; and (2) such work “exists in significant numbers in the
7 national economy.” 20 C.F.R. § 416.960(c)(2); *Beltran v. Astrue*, 700 F.3d 386,
8 389 (9th Cir. 2012).

9 **ALJ’S FINDINGS**

10 At step one, the ALJ found that Plaintiff had not engaged in substantial
11 gainful activity since the alleged date of onset, September 5, 2016. Tr. 22.

12 At step two, the ALJ found that Plaintiff had the following severe
13 impairments: methamphetamine abuse; ADHD; PTSD; borderline intellectual
14 functioning; and major depressive disorder with psychotic symptoms. Tr. 22.

15 At step three, the ALJ found that, including Plaintiff’s substance use, the
16 severity of his impairments met the criteria of listing 12.06 of 20 C.F.R. Part 404,
17 Subpart P, Appendix 1. Tr. 23.

18 The ALJ then found that if Plaintiff stopped the substance use, his remaining
19 limitations would cause more than a minimal impact on his ability to perform basic
20 work activities; therefore, he would continue to have a severe impairment or
21 combination of impairments at step two. Likewise, the ALJ found that if Plaintiff

1 stopped the substance use, he would not have an impairment or combination of
2 impairments that met or medically equaled the severity of one of the impairments
3 listed in 20 C.F.R. Part 404, Subpart P, Appendix 1. Tr. 25.

4 The ALJ then found that if Plaintiff stopped the substance use, he had the
5 RFC to perform a full range of work at all exertional levels with the following
6 nonexertional limitations:

7 The claimant is able to understand, remember, and carryout 1-3 step
8 tasks with only occasional changes in the work setting. He should have
9 no interaction with the public and only brief and superficial contact with
coworkers and supervisors. Within such parameters, he would be able
to maintain concentration, persistence, and pace.

10 Tr. 27. At step four, the ALJ found Plaintiff could not perform past relevant work.

11 Tr. 31.³

12 At step five, the ALJ found that if Plaintiff stopped the substance use,
13 considering his age, education, work experience, and RFC, there were other jobs
14 that exist in significant numbers in the national economy that Plaintiff could
15 perform, including laundry worker II, lab equipment cleaner, and cleaner II. Tr.
16 32.

18 ³Although the findings section of the ALJ's opinion states that Plaintiff "can
19 perform past relevant work," this was clearly a typographical or scrivener's error
20 as the ALJ's subsequent findings state that Plaintiff does not have past relevant
21 work. Tr. 31.

1 The ALJ found that Plaintiff's substance use disorder was a contributing
2 factor material to the determination of disability because he would not be disabled
3 if he stopped the substance use. Tr. 32. Because the substance use disorder was a
4 contributing factor material to the determination of disability, Plaintiff had not
5 been disabled within the meaning of the Social Security Act at any time from the
6 alleged onset date through the date of the decision. Tr. 32-33.

7 ISSUES

8 Plaintiff seeks judicial review of the Commissioner's final decision denying
9 him SSI under Title XVI. ECF No. 12. Plaintiff raises the following issues for this
10 Court's review:

- 11 1. Whether the ALJ properly found that substance use was a contributing factor
12 material to disability;
- 13 2. Whether the ALJ properly addressed the medical opinions; and
- 14 3. Whether the ALJ properly addressed Plaintiff's symptom statements.

15 DISCUSSION

16 1. Substance Use

17 Plaintiff challenges the ALJ's finding that his substance use was a
18 contributing factor material to disability. ECF No. 12 at 3-9.

19 The Social Security Act bars payment of benefits when drug or alcohol
20 abuse is a contributing factor material to a disability claim. 42 U.S.C. §§
21 423(d)(2)(C) & 1382c(a)(3)(J); *Bustamante v. Massanari*, 262 F.3d 949 (9th Cir.

2001). If there is evidence from an acceptable medical source that Plaintiff has a substance abuse disorder and the claimant succeeds in proving disability, the Commissioner must determine whether drug or alcohol abuse is *material* to the determination of disability. 20 C.F.R. § 416.935; S.S.R. 13-2p at ¶ 8(b)(i) (Feb. 20, 2013), *available at* 2013 WL 621536. That is, the ALJ must perform the sequential evaluation process a second time, separating out the impact of the claimant's drug or alcohol abuse, to determine if he would still be found disabled if he stopped using drugs or alcohol. *Bustamante*, 262 F.3d at 955. Drug or alcohol abuse is a materially contributing factor if the claimant would not meet the Social Security's definition of disability if claimant were not using drugs or alcohol. 20 C.F.R. § 416.935(b).

Here, the ALJ found that there was evidence from an acceptable medical source that Plaintiff had a substance use disorder. Tr. 22 (finding methamphetamine abuse as a medically determinable severe impairment at step two). The ALJ also found that, including this substance use, Plaintiff met listing 12.06 and was disabled at step three of the sequential evaluation process. Tr. 23. The ALJ then performed a second sequential evaluation process separating out the impact of Plaintiff's substance use and found that he was not disabled at step five if he stopped using substances. Tr. 25-33. Plaintiff presents two specific challenges to the ALJ's finding that substance use was a contributing factor material to the determination of disability: (1) the ALJ failed to properly assess functioning in the

1 absence of substance use during the relevant period; and (2) the ALJ failed to
2 consider evidence indicating that Plaintiff's substance use was not material. ECF
3 No. 12 at 4-9.

4 **A. Functioning**

5 Plaintiff argues that the ALJ failed to properly assess functioning in the
6 absence of substance use during the relevant period. ECF No. 12 at 4-5.

7 To determine whether a claimant would be disabled if substance use
8 stopped, S.S.R. 13-2p provides different guidance depending upon whether alleged
9 disabling impairment is physical or mental. For physical impairments, "evidence
10 from a period of abstinence is the best evidence for determining whether a physical
11 impairment(s) would improve to the point of nondisability." S.S.R. 13-2p at ¶
12 6(b). Further, when considering a period of abstinence, it "does not have to occur
13 during the period [the ALJ is] considering in connection with the claim as long as
14 it is medically relevant to the period we are considering." *Id.* at ¶ 6(b) n.18. For
15 mental impairments, S.S.R. 13-2p does not specifically provide that a period of
16 abstinence is best evidence for determining whether the substance use is material,
17 nor does it provide that evidence prior to the alleged disability period is relevant.
18 *Id.* at ¶ 7. Rather, to support a finding that substance use is material, S.S.R. 13-2p
19 requires "evidence in the record that establishes that a claimant with a co-occurring
20 mental disorder would improve, or the extent to which it would improve, if the
21 claimant were to stop using drugs." *Id.* at ¶ 7(a). However, when specifically

1 discussing how the ALJ is to consider periods of abstinence, S.S.R. 13-2p states
2 that periods of abstinence may still be relevant in cases including co-occurring
3 mental disorders:

4 In all cases in which we must consider periods of abstinence, the
5 claimant should be abstinent long enough to allow the acute effects of
6 drug or alcohol use to abate. *Especially in cases involving co-occurring*
7 *mental disorders*, the documentation of a period of abstinence should
8 provide information about what, if any, medical findings and
9 impairment-related limitations remained after the acute effects of drug
10 and alcohol use abated. Adjudicators may draw inferences from such
information based on the length of the period(s), how recently the
period(s) occurred, and whether the severity of the co-occurring
impairment(s) increased after the period(s) of abstinence ended. To
find that [substance use] is material, we must have evidence in the case
record demonstrating that any remaining limitations were not disabling
during the period.

11 *Id.* at ¶ 9(b) (*emphasis added*).

12 First, Plaintiff argues that the ALJ failed to identify any period of abstinence
13 in the relevant period. ECF No. 12 at 4. However, according to S.S.R. 13-2p, the
14 ALJ was not required to consider a period of abstinence because Plaintiff only
15 alleged mental impairments. Despite not being required to consider such a period
16 of abstinence, the ALJ did consider the period that Plaintiff was incarcerated. Tr.
17 24 (“He testified that he did best in prison, where he could not use drugs, and said
18 his depression and anxiety decreased when he was not using and he had a job in
19 prison, at which he seems to have stabilized.”). Plaintiff was released from prison
20 prior to the alleged date of onset on December 21, 2015. Tr. 56. At the hearing,
21 Plaintiff testified that he was in prison for four years, that he was not using

1 substances during those four years, and that it “was the best time of my life,”
2 because “I had enough time in a structured environment to make certain changes
3 and it worked out well, but it didn’t last when I got out.” Tr. 51. Plaintiff testified
4 that while incarcerated, he was not on any medications, but did complete an
5 inpatient drug program. Tr. 51-52. The ALJ asked whether or not Plaintiff was
6 required to get a prison job once he completed the drug treatment program, and
7 Plaintiff stated that he was not expected to have a job, but “I worked because I like
8 working. I worked almost the entire time that I was there, the whole four years.”
9 Tr. 52. He further clarified that this work was at a rate of eight hours a day, five
10 days a week. Tr. 55.

11 Plaintiff argues that this testimony supports a finding that it was the
12 structured environment of prison that led to improvement in his symptoms, and not
13 the lack of substance use. ECF No. 12 at 5. However, Plaintiff’s testimony can
14 reasonably be interpreted to support a finding that the lack of substances led to a
15 decrease in symptoms while incarcerated. If the evidence is susceptible to more
16 than one rational interpretation, the Court may not substitute its judgment for that
17 of the ALJ. *Tackett*, 180 F.3d at 1097. Since, the ALJ was not required to
18 consider a period of abstinence in this case, the fact that he considered a period
19 outside the relevant time period is not an error. Furthermore, S.S.R. 13-3p does
20 not require that periods of abstinence be during the relevant period; therefore, the
21 ALJ will not disturb the ALJ’s determination.

1 Second, Plaintiff argues that the ALJ failed to provide any explanation as to
2 why the marked limitations in every “paragraph B” criteria with substance use
3 changed to moderate limitations without substance use. ECF No. 12 at 4, 7-8.
4 While the ALJ did not discuss the downgrade from marked to moderate limitations
5 while discussing the moderate limitations, Tr. 26, he did provide an explanation for
6 the higher rating while discussing the marked limitations, Tr. 24. The ALJ
7 provided the following explanations for why the limitations were greater while
8 Plaintiff was using substances:

9 At the hearing, the claimant testified that when he is using drugs, he
10 quickly loses jobs, makes poor decisions, and ends up in prison. He
11 testified that he did best in prison, where he could not use drugs, and
12 said his depression and anxiety decreased when he was not using and
13 he had a job in prison, at which he seems to have stabilized. After
prison, the claimant testified he had a job that he liked, and according
to his testimony this job ended due to reasons not associated with his
impairments. He even admitted that he historically has not been able
to maintain employment due to his drug usage.

14 Tr. 24. Plaintiff argues that this is not an accurate representation of the testimony
15 provided at the hearing. ECF No. 12 at 5. As addressed above, Plaintiff’s
16 testimony regarding his functional abilities in prison can be interpreted to be the
17 result of abstinence from substances. He further testified that once out of prison he
18 started working at Washington Crab on January 1, 2016. Tr. 56. He testified that
19 he succeeded at that job because he was able to be left alone. Tr. 57. He further
20 testified that he left the job because his friend was in a car accident and he became
21 his caregiver. Tr. 57-58. He explained that he had been a caregiver to this friend

1 off and on for twenty years. Tr. 58-59. He stated that in the beginning of the
2 twenty-year period, he “had two jobs and was doing well and then drugs got
3 involved and so on.” Tr. 59. Therefore, the ALJ’s summary of Plaintiff’s
4 testimony is supported in the record.

5 Third, Plaintiff argues that the reason Plaintiff left his job at Washington
6 Crab has no bearing on the materiality of his substance use. ECF No. 12 at 5-6.
7 However, this job was on the heels of a four-year period of abstinence, and it lasted
8 less than a month. Tr. 197. Therefore, it reasonably supports the ALJ’s finding
9 that Plaintiff’s impairments without substance use did not prevent him from
10 working.

11 **B. Evidence**

12 Plaintiff argues that the ALJ failed to consider evidence indicating that
13 Plaintiff’s substance use was not material. ECF No. 12 at 5-9. In doing so, he
14 argues that the ALJ improperly considered the medical opinions of Dr. Moore, Dr.
15 Widlan, Dr. Petaja, Dr. Burdge, and Dr. Metoyer, *Id.* at 6-7.

16 First, the ALJ asserts that the ALJ erred in the treatment of the medical
17 opinions regarding the materiality of Plaintiff’s substance use. The ALJ relied on
18 the opinion of Dr. Moore to support his determination that Plaintiff’s substance use
19 was a contributing factor material to his disability. In 2010, Dr. Moore found that
20 Plaintiff had marked to severe functional limitations, but that substance abuse
21 treatment would likely improve Plaintiff’s ability to function in the work setting.

Tr. 284. Plaintiff argues that this opinion predates the alleged onset, and is of limited relevance. ECF No. 12 at 6. While the ALJ is accurate that medical opinions regarding functioning that predate the alleged onset date are of limited relevance, *Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1165 (9th Cir. 2008), the ALJ can look outside the relevant period to assess whether or not a claimant's substance use is a contributing factor material to disability, S.S.R. 13-2p. This 2010 opinion while Plaintiff was using substances juxtaposed by his subsequent success working while in prison and not using substances supports the ALJ's finding that Plaintiff's substance use is material.

Plaintiff challenges the weight provided to the other opinions in the record. ECF No. 12 at 6-7. However, the Court finds that the ALJ did not err in his treatment of these opinions. *See infra*. Therefore, the Court finds that the ALJ did not err in his determination that Plaintiff's substance use was a contributing factor material to the determination of disability.

2. Medical Opinions

Plaintiff challenges the ALJ's treatment of the opinions of Jan Lewis, Ph.D., David Widlan, Ph.D., Holly Petaja, Ph.D., Aaron Burdge, Ph.D, and Patrick Metoyer, Ph.D. ECF No. 12 at 9-17.

For claims filed on or after March 27, 2017, new regulations apply that change the framework for how an ALJ must weigh medical opinion evidence. *Revisions to Rules Regarding the Evaluation of Medical Evidence*, 2017 WL

1 168819, 82 Fed. Reg. 5844 (Jan. 18, 2017); 20 C.F.R. § 416.920c. The new
2 regulations provide that the ALJ will no longer give any specific evidentiary
3 weight to medical opinions or prior administrative medical findings, including
4 those from treating medical sources. 20 C.F.R. § 416.920c(a). Instead, the ALJ
5 will consider the persuasiveness of each medical opinion and prior administrative
6 medical finding, regardless of whether the medical source is an Acceptable
7 Medical Source. 20 C.F.R. § 416.920c(c). The ALJ is required to consider
8 multiple factors, including supportability, consistency, the source's relationship
9 with the claimant, any specialization of the source, and other factors (such as the
10 source's familiarity with other evidence in the file or an understanding of Social
11 Security's disability program). *Id.* The regulations emphasize that the
12 supportability and consistency of the opinion are the most important factors, and
13 the ALJ must articulate how he considered those factors in determining the
14 persuasiveness of each medical opinion or prior administrative medical finding. 20
15 C.F.R. § 416.920c(b). The ALJ may explain how he considered the other factors,
16 but is not required to do so, except in cases where two or more opinions are equally
17 well-supported and consistent with the record. *Id.*

18 Supportability and consistency are further explained in the regulations:

19 (1) *Supportability*. The more relevant the objective medical evidence
20 and supporting explanations presented by a medical source are to
21 support his or her medical opinion(s) or prior administrative medical
finding(s), the more persuasive the medical opinions or prior
administrative medical finding(s) will be.

(2) *Consistency*. The more consistent a medical opinion(s) or prior administrative medical finding(s) is with the evidence from other medical sources and nonmedical sources in the claim, the more persuasive the medical opinion(s) or prior administrative medical finding(s) will be.

20 C.F.R. § 404.1520c(c).⁴

A. Jan Lewis, Ph.D.

On April 15, 2019, Dr. Lewis provided a psychological consultant opinion as part of Plaintiff's reconsideration determination. Tr. 86-90. She found that Plaintiff was capable of carrying out simple one to three step instructions, could maintain concentration, persistence, and pace for up to two hours continuously, could maintain adequate attendance, and completed a normal workday/workweek within normal tolerances of a competitive workplace. Tr. 89. She opined that Plaintiff would be able to interact with coworkers and supervisors on an

⁴The parties disagree over whether Ninth Circuit case law continues to be controlling in light of the amended regulations, specifically whether an ALJ is still required to provide specific and legitimate reasons for discounting a contradicted opinion from a treating or examining physician. ECF Nos. 12 at 10, 14 at 7-8. This Court has previously concluded that the regulations displace Ninth Circuit precedence. *Emilie K. v. Saul*, No. 2:20-CV-00079-SMJ, 2021 WL 864869, *3-4 (E.D. Wash. Mar. 8, 2021), *reversed on other grounds*, No. 21-35360 (9th Cir. Dec. 10, 2021).

1 intermittent basis, working a job that is independent of others, and did not involve
2 the public. Tr. 90. She further opined that Plaintiff was capable of adapting to
3 occasional changes and hazard awareness would be limited when under the effects
4 of substances. Tr. 90. The ALJ found this opinion to be persuasive. Tr. 30.

5 Plaintiff challenges the ALJ's reliance on this opinion in forming the RFC
6 determination because Dr. Lewis failed to meet the qualifications of a
7 psychological consultant when he signed the opinion. ECF No. 12 at 10.
8 Regulations require that a psychological consultant be a licensed or certified
9 psychologist at the independent practice level of psychology by the State in which
10 he or she practices. 20 C.F.R. § 416.1016(d)(1). On August 20, 2020, Jennifer
11 Pasinetti from the Seattle Hearing Office entered a note in the file stating that
12 "[t]he file includes a reconsideration determination signed by an individual who
13 did not meet the qualifications of a psychologist consultant because s/he had a
14 restricted license when s/he signed the determination." Tr. 279. Therefore, this
15 opinion cannot be relied upon when forming the RFC determination.

16 However, any error resulting from the ALJ's reliance on this opinion is
17 harmless. *See Tommasetti*, 533 F.3d at 1038 (An error is harmless when "it is clear
18 from the record that the . . . error was inconsequential to the ultimate nondisability
19 determination."). The new regulations state that the ALJ is no longer required to
20 defer or "give any specific evidentiary weight, including controlling weight, to any
21 medical opinion(s) or prior administrative medical finding(s), including those from

1 your medical source.” 20 C.F.R. § 416.920c(a). These new Regulations were
2 enacted to steer ALJs away from articulated weight given to opinions, and to focus
3 on the objective evidence in the record: “Courts reviewing claims under our
4 current rules have focused more on whether we sufficiently articulate the weight
5 we gave treating source opinions, rather than on whether substantial evidence
6 supports our final decision,” 82 Fed. Reg. at 5853; and “Our intent in these rules is
7 to make it clear that it is never appropriate under our rules to ‘credit-as-true’ any
8 medical opinion” 82 Fed. Reg. at 5858. Therefore, whether Dr. Lewis qualified as
9 a medical consultant under the Regulations is harmless so long as the ALJ’s RFC
10 determination is supported by substantial evidence. The Court finds that it is. As
11 discussed at length above, Plaintiff has demonstrated an ability to maintain
12 competitive work eight-hours a day, five days a week when he abstains from
13 substance use. Furthermore, as discussed at length below, the ALJ’s determination
14 that the medical opinions of a more restrictive RFC are not persuasive is supported
15 by substantial evidence.

16 **B. Opinions from Department of Social and Health Services**

17 The ALJ found the opinions from evaluators and reviewers from DSHS were
18 not persuasive. Tr. 30-31.

19 On February 26, 2018, Dr. Widlan evaluated Plaintiff and completed a
20 Psychological Psychiatric Evaluation for DSHS on March 1, 2018. Tr. 297-309.
21 During the evaluation, Plaintiff reported “a long history of meth use. He reported

1 he most recently underwent treatment in prison in April 2012.” Tr. 298. He
2 diagnosed Plaintiff with PTSD, major depressive disorder, methamphetamine use
3 disorder (continuous), rule out dependent personality disorder, and rule out
4 borderline intellectual functioning vs. ADHD. Tr. 298. He opined that Plaintiff
5 had a marked impairment in six areas of basic work activity and a moderate
6 limitation in the remaining seven areas of basic work activity. Tr. 299. He stated
7 that the current impairments were not the primary result of substance use in the
8 past 60 days and that the impairments would persist following 60 days of sobriety.
9 Tr. 299. He stated that a chemical dependency assessment or treatment was not
10 recommended. Tr. 299. In the Prognosis/Plan section, he stated that Plaintiff
11 would be impaired with available treatment for six to twelve months and stated that
12 treatment recommendations included inpatient chemical dependency treatment
13 with sober housing and aftercare, counseling, and medication management. Tr.
14 299.

15 On March 6, 2018, Dr. Petaja completed a Review of Medical Evidence
16 form for DSHS after reviewing the 2010 evaluation from Dr. Moore and the 2018
17 evaluation from Dr. Widlan. Tr. 277-81, 296. She stated that substance abuse was
18 not deemed primary, but did not provide any opinion as to whether Plaintiff’s
19 impairment would persist following sixty days of sobriety. Tr. 277, 281, 296. She
20 provided the same functional opinion as Dr. Widlan with six marked limitations
21 and seven moderate limitations. Tr. 280.

1 On September 17, 2018, Dr. Burdge completed a Review Medical Evidence
2 for DSHS after reviewing the evaluation of Dr. Widlan, the Review of Medical
3 Evidence form from Dr. Petaja, and some treatment notes for 2018. Tr. 314-19.
4 He stated that it was not likely that substance use was Plaintiff's primary
5 impairment, but failed to state whether Plaintiff's impairments would be expected
6 to persist following sixty days of sobriety. Tr. 314. Dr. Burdge provided a
7 functional evaluation opinion that Plaintiff had a marked limitation in six areas of
8 basic functioning, a moderate limitation in five areas of basic functioning, and an
9 indeterminable severity of impairment in two areas of basic functioning. Tr. 316.

10 The ALJ found all the opinions from DSHS to be not persuasive. Tr. 30-31.
11 First, the ALJ provided a general statement rejecting all the opinions because
12 "under our Agency regulations we consider the decisions of other agencies and
13 nongovernmental agencies inherently neither valuable nor persuasive." Tr. 30.
14 The ALJ is correct that the new Regulations state decisions by other government
15 agencies and nongovernmental entities are inherently neither valuable nor
16 persuasive to the issue of whether a claimant is disabled under the Social Security
17 Act. 20 C.F.R. § 416.920b(c). However, 20 C.F.R. § 416.904 makes it clear that
18 the ALJ is not required to even discuss State agency determinations in his decision,
19 he is required to "consider all of the supporting evidence underlying the other
20 governmental agency or nongovernmental entity's decision that we receive."
21 Therefore, the ALJ was not required to discuss the ultimate finding that Plaintiff

1 was disabled under DSHS rules, he was required to discuss the medical opinions
2 used to support the DSHS determinations. As such, this was not a sufficient reason
3 to find the DSHS opinions not persuasive. However, any error resulting from this
4 determination is harmless because the ALJ provided other sufficient reasons
5 supported by substantial evidence to find these opinions not persuasive. *See*
6 *Tommasetti*, 533 F.3d at 1038 (An error is harmless when “it is clear from the
7 record that the . . . error was inconsequential to the ultimate nondisability
8 determination.”).

9 Second, the ALJ found that all of the DSHS evaluators and reviewers did not
10 review any treatment records. Tr. 30. While the Regulations make it clear that
11 supportability and consistency are the most important factors to be considered
12 when determining persuasiveness, how familiar a source is with other evidence in
13 the claim can also be considered. 20 C.F.R. § 416.920c(c)(5). Therefore, this
14 factor supports a finding that the opinions are not persuasive for all the DSHS
15 opinions, except that of Dr. Burdge, who reviewed some treatment records.

16 Third, the ALJ found that all of the DSHS evaluations and reviews were
17 inconsistent with the minimal difficulties found on mental status examinations and
18 the observations of normal mood and affect or some mild deficits related to anxiety
19 frustration, and/or distress. Tr. 31. This general determination was not supported
20 by substantial evidence. Here, the 2018 mental status examinations showed some
21 abnormalities, but the 2019 mental status examination was normal except for

1 performing serial sevens. Tr. 300-301, 355-56. Additionally, in the limited
2 treatment notes that were not associated with DSHS records, Plaintiff appeared
3 with deficits related to anxiety, frustration, or distress. Tr. 358 (“euthymic to
4 anxious mood with congruent affect”); Tr. 373 (Plaintiff “had a frustrated to
5 distressed mood with congruent affect”); Tr. 376 (“anxious mood with congruent
6 affect”); Tr. 382 (“distressed mood to euthymic affect”). However, this
7 unsupported general statement amounts to harmless error as the ALJ provided
8 specific reasons to reject the opinions as discussed below.

9 Fourth, the ALJ found that Dr. Widlan did not discuss the basis or support
10 for his assessment and he provided an inconsistent opinion about whether or not
11 Plaintiff required substance abuse treatment. Tr. 30-31. Dr. Widlan did complete
12 a mental status exam which showed depression, restricted affect, paranoid ideation,
13 mildly impaired memory, impaired concentration, impaired abstract thought, and
14 impaired insight and judgment. Tr. 300-01. Therefore, the ALJ’s blanket
15 statement that the Dr. Widlan failed to discuss the basis for the assessment without
16 more explanation as to how the mental status examination failed to support the
17 assessment is not specific enough for a meaningful review and cannot support a
18 finding that the opinion is not persuasive. However, the ALJ’s finding that the
19 opinion was internally inconsistent regarding whether Plaintiff’s treatment should
20 include substance abuse is supported by substantial evidence. Dr. Widlan checked
21 the box indicating that chemical dependency assessment or treatment was not

1 recommended, then later stated that inpatient chemical dependency treatment with
2 sober housing and aftercare were treatment recommendations. Tr. 299. This is
3 significant in finding the opinion not persuasive because Dr. Widlan stated that
4 Plaintiff's impairments would be at the severity opined for six to twelve months
5 with available treatment. Tr. 299. Therefore, it is unclear if Dr. Widlan is opining
6 that Plaintiff would improve within six to twelve months with substance abuse
7 treatment. Therefore, the ALJ's reason for finding the opinion not persuasive is
8 supported by substantial evidence.

9 Fifth, the ALJ found the opinion of Dr. Petaja was not persuasive because
10 she relied on the opinions of Dr. Moore and Dr. Widlan, which the ALJ also found
11 not persuasive. Tr. 31. Dr. Petaja only reviewed the opinions from Dr. Moore and
12 Dr. Widlan. Tr. 277, 296. She did not examine Plaintiff herself. The ALJ found
13 that the opinions of Dr. Moore and Dr. Widlan were not persuasive. Tr. 30-31.
14 This Court finds that the ALJ's treatment of Dr. Widlan's opinions were supported
15 by substantial evidence and Plaintiff did not challenge the treatment of Dr.
16 Moore's opinion in the RFC determination. Therefore, the ALJ will not disturb the
17 ALJ's treatment of Dr. Petaja's opinion.

18 Sixth, the ALJ found the opinion of Dr. Budge to be not persuasive because
19 he did not provide support or basis for the limitations suggested. Tr. 31. Here, Dr.
20 Burdge provided an RFC opinion different from Dr. Widlan and Dr. Petaja without
21 any explanation as to why the opinion differed. Tr. 316. Therefore, the ALJ's

1 determination supports a finding that the opinion was neither well supported nor
2 consistent in the record. As such, the Court will not disturb the ALJ's treatment of
3 the opinion.

4 In conclusion, the ALJ provided legally sufficient reasons to determine the
5 opinions from DSHS were not persuasive. Any errors on the part of the ALJ were
6 harmless because he provided at least one reason to find each opinion not
7 persuasive. *See Tommasetti*, 533 F.3d at 1038 (An error is harmless when "it is
8 clear from the record that the . . . error was inconsequential to the ultimate
9 nondisability determination.").

10 **C. Patrick Metoyer, Ph.D.**

11 On March 31, 2019, Dr. Metoyer evaluated Plaintiff and reviewed treatment
12 records. Tr 353-57. Plaintiff reported no current marijuana or other illicit
13 substances and specifically stated that he quit using methamphetamine two years
14 prior. Tr. 355. Dr. Metoyer diagnosed him with panic disorder, PTSD, major
15 depressive disorder, and ADHD. Tr. 356. Dr. Metoyer opined that Plaintiff had a
16 mild impairment in memory, a "likely" moderate impairment in the ability to
17 interact with co-workers and the public, a moderate impairment in the ability to
18 maintain regular attendance in the workplace, a "likely" moderate impairment in
19 the ability to completed a normal workday or work week without interruption from
20 psychological symptoms, and a markedly impaired in the ability to deal with the
21 usual stress encountered in the workplace if it involves persistence activity,

1 complex tasks, task pressure, or interacting with other individuals. Tr. 357.

2 The ALJ found this opinion not persuasive for four reasons: (1) Plaintiff
3 denied the use of substances while he was using methamphetamine; (2) Plaintiff
4 stated he had significant physical difficulties which was inconsistent with
5 Plaintiff's hearing testimony; (3) Dr. Metoyer failed to describe any specific
6 limitation that would be disabling; and (4) Dr. Metoyer did not provide any
7 explanation, support, or basis for the opined ratings. Tr. 30.

8 The ALJ's first reason for finding the opinion not persuasive, that Plaintiff
9 denied the use of substances while he was using methamphetamine, is supported
10 by substantial evidence. Plaintiff told Dr. Metoyer that he had not used
11 methamphetamine for two years. Tr. 355. However, in August of 2018, Plaintiff
12 was admitted to substance abuse treatment and reported that he was using
13 methamphetamines daily. Tr. 400-01. Additionally, Plaintiff reported that he left
14 the inpatient treatment program early and was continuing to use substances on
15 December 5, 2018. Tr. 350. Therefore, there is evidence that Plaintiff was using
16 methamphetamines on a daily basis within the two years of Dr. Metoyer's
17 evaluation.

18 Plaintiff argues that there is no evidence in the record that Plaintiff was
19 using substances at the time of the evaluation, citing a February 2019 treatment
20 note stating he was not currently using methamphetamines and asserting that there
21 is no evidence of substance use again until August of 2019. ECF No. 12 at 16. On

1 February 26, 2019, Plaintiff reported to his therapist that he had stopped using
2 methamphetamines. Tr. 363. Then, on August 2, 2019, Plaintiff reported that he
3 had used meth a week prior. Tr. 390. However, regardless of Plaintiff's use at the
4 time of the evaluation, this false report of substance use combined with Plaintiff's
5 false report of physical impairments, *see infra.*, demonstrates that Plaintiff was not
6 being forthcoming with Dr. Metoyer and the opinion cannot be found to be
7 supported. Therefore, the ALJ did not err in finding that the opinion was not
8 persuasive.

9 The ALJ's second reason for finding the opinion not persuasive, that
10 Plaintiff stated he had significant physical difficulties which was inconsistent with
11 Plaintiff's hearing testimony, is supported by substantial evidence. During the
12 evaluation, Plaintiff stated that he had health difficulties, including chronic pain
13 symptoms, that impacted his day-to-day functioning. Tr. 354. Dr. Metoyer stated
14 that Plaintiff "appears to have some potential physical limitations that would better
15 be assessed by a medical provider." Tr. 357. However, at the hearing, Plaintiff
16 testified that he had no physical impairments that would limit his ability to work.
17 Tr. 47. This further demonstrates that Plaintiff was not being forthcoming with Dr.
18 Metoyer and the opinion cannot be supported. Therefore, the ALJ did not err in
19 finding that that opinion was not persuasive.

20 The ALJ's third reason for finding the opinion not persuasive, that Dr.
21 Metoyer failed to describe any specific limitation that would be disabling, is

1 inconsequential to the finding of persuasiveness. The ALJ appears to be asserting
2 that even if Dr. Metoyer's opinion were found persuasive, the opinion does not
3 present a work preclusive RFC. Tr. 30 ("Dr. Metoyer's opinion does not describe
4 any specific limitation that would be disabling"). Here, regardless of the opinion's
5 ultimate impact on the RFC determination, the ALJ found it not persuasive.

6 The ALJ's fourth reason for finding the opinion not persuasive, that Dr.
7 Metoyer did not provide any explanation, support, or basis for his opined ratings, is
8 not supported by substantial evidence. Here, the ALJ specifically tied his opined
9 impairment rating to a diagnosed impairment: "Due to anxiety, PTSD, mood
10 symptoms, ADHD symptoms, and tendency to isolate himself from others, his
11 ability to maintain regular attendance in the workplace is moderately impaired."
12 Tr. 357. However, any error resulting from this reason is harmless because the
13 ALJ provided a sufficient reason to find the opinion not persuasive. *See*
14 *Tommasetti*, 533 F.3d at 1038 (An error is harmless when "it is clear from the
15 record that the . . . error was inconsequential to the ultimate nondisability
16 determination.").

17 **2. Plaintiff's Symptom Statements**

18 Plaintiff argues that the ALJ erred in the treatment of his symptom
19 statements. ECF No. 12 at 17-21.

20 An ALJ engages in a two-step analysis when evaluating a claimant's
21 testimony regarding subjective pain or symptoms. "First, the ALJ must determine

1 whether the claimant has presented objective medical evidence of an underlying
2 impairment which could reasonably be expected to produce the pain or other
3 symptoms alleged.” *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009). “The
4 claimant is not required to show that his impairment could reasonably be expected
5 to cause the severity of the symptom he has alleged; he need only show that it
6 could reasonably have caused some degree of the symptom.” *Id.*

7 Second, “[i]f the claimant meets the first test and there is no evidence of
8 malingering, the ALJ can only reject the claimant’s testimony about the severity of
9 the symptoms if [the ALJ] gives ‘specific, clear and convincing reasons’ for the
10 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (internal
11 citations and quotations omitted).

12 The ALJ stated that Plaintiff’s statements about intensity, persistence, and
13 limiting effects of his symptoms “are not entirely consistent with the medical
14 evidence and other evidence in the record.” Tr. 27. The ALJ gave six reasons for
15 rejecting Plaintiff’s symptom statements: (1) he inconsistently described his
16 symptoms; (2) he had minimal or conservative treatment for his mental health
17 conditions; (3) there was evidence he was attempted to mislead evaluators; (4) the
18 record shows his symptoms improved when he abstained from drug use; (5) his
19 statements were inconsistent with his reported activities; and (6) his performance
20 on mental status examinations and observation by providers were inconsistent with
21 his allegations. Tr. 27-29.

1 The ALJ’s first reason for rejecting Plaintiff’s symptom statements, that he
2 inconsistently described his symptoms, is specific, clear and convincing. In
3 weighing a claimant’s symptom statements, the ALJ may consider “ordinary
4 techniques of credibility evaluation, such as the claimant’s reputation for lying,
5 prior inconsistent statements . . . and other testimony by the claimant that appears
6 less than candid.” *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996). While
7 applying for benefits, Plaintiff alleged auditory hallucinations, “I hear voices that
8 makes [sic] me want to respond to them.” Tr. 235. However, during his
9 consultative evaluation with Dr. Metoyer, Plaintiff denied such hallucinations. Tr.
10 353. Likewise, during his consultative evaluation with Dr. Metoyer, Plaintiff
11 alleged physical impairments, including chronic pain. Tr. 354. However, at the
12 hearing, Plaintiff testified that he had no physical impairments that impacted his
13 ability to work. Tr. 47. Therefore, the ALJ’s determination is supported by
14 substantial evidence and meets the specific, clear and convincing standard.

15 The ALJ’s second reason for rejecting Plaintiff’s symptom statements, that
16 he had minimal or conservative treatment for his mental health conditions, is
17 specific, clear and convincing. Conservative treatment can be “sufficient to
18 discount a claimant’s testimony regarding [the] severity of an impairment.” *Parra*
19 *v. Astrue*, 481 F.3d 742, 751 (9th Cir. 2007). Likewise, noncompliance with
20 medical care or unexplained or inadequately explained reasons for failing to seek
21 medical treatment cast doubt on a claimant’s subjective complaints. 20 C.F.R. §

1 416.930; *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989). The ALJ found that
2 Plaintiff had minimal and conservative treatment for his mental health conditions.
3 Tr. 28. Additionally, the ALJ noted that Plaintiff failed to follow through with the
4 treatment that was prescribed. Tr. 28. The ALJ noted that much of Plaintiff's
5 treatment was in the context of establishing and maintaining welfare benefits, the
6 treatment records do not demonstrate significant mental health symptoms, and
7 Plaintiff refused to take psychiatric medication despite them being advised. Tr. 28.
8 The only mental health treatment in the record is from Central Washington
9 Comprehensive Mental Health and is limited to August through December of 2018
10 through January of 2020. Tr. 314-52, 358-38. However, the last completed
11 treatment session by Plaintiff was in August of 2019 and he was later discharged
12 from treatment. Tr. 397. Medication management was advised throughout the
13 record. Tr. 285, 299, 323. However, Plaintiff never took medication. Tr. 354.
14 Therefore, the ALJ's determination that Plaintiff's treatment was conservative and
15 he refused medication is supported by substantial evidence and meets the specific,
16 clear and convincing standard.

17 The ALJ's determination that Plaintiff failed to follow through with
18 described treatment is not specific, clear, and convincing. The period in which
19 Plaintiff refused treatment was in 2010 and predated the alleged onset date. Tr.
20 285 ("Client is currently enrolled in Sound behavioral healthout, [sic] which he has
21 not been participating in."). Therefore, this reason does not meet the specific,

1 clear, and convincing standard.

2 The ALJ's third reason for rejecting Plaintiff's symptom statements, that
3 there was evidence he attempted to mislead evaluators, is specific, clear and
4 convincing. In weighing a claimant's symptom statements, the ALJ may consider
5 "ordinary techniques of credibility evaluation, such as the claimant's reputation for
6 lying, prior inconsistent statements . . . and other testimony by the claimant that
7 appears less than candid." *Smolen*, 80 F.3d at 1284. In 2010, Plaintiff's testing
8 showed a low verbal and performance IQ. Tr. 282. However, Dr. Moore stated
9 that Plaintiff engaged in some impression management or limiting his effect in his
10 IQ testing. Tr. 285. While this testing predates that alleged onset date, combined
11 with Plaintiff's inconsistent statements regarding drug use, it shows a pattern of
12 misleading evaluators. Therefore, this meets the specific, clear and convincing
13 standard.

14 The ALJ's fourth reason for rejecting Plaintiff's symptom statements, that
15 the record shows his symptoms improved when he abstained from drug use, is
16 specific, clear and convincing. As discussed at length above, the record supports
17 the finding that Plaintiff's symptoms improved with abstinence from substance
18 use.

19 The ALJ's fifth reason for rejecting Plaintiff's symptom statements, that his
20 statements were inconsistent with his reported activities, is not specific, clear, and
21 convincing. A claimant's daily activities may support an adverse credibility

1 finding if the claimant's activities contradict his other testimony. *Orn v. Astrue*,
2 495 F.3d 625, 639 (9th Cir. 2007) (citing *Fair*, 885 F.2d at 603). A claimant need
3 not be "utterly incapacitated" to be eligible for benefits. *Fair*, 885 F.2d at 603.
4 Here, the ALJ found that Plaintiff's reported activities of going to the store and
5 having minimal social interactions were inconsistent with his reports that his social
6 limitations precluded him from working. Tr. 28. The Ninth Circuit has warned
7 ALJs against using simple household activities against a person when evaluating
8 their testimony:

9 We have repeatedly warned that ALJs must be especially cautious in
10 concluding that daily activities are inconsistent with testimony about
11 pain, because impairments that would unquestionably preclude work
and all the pressures of a workplace environment will often be
consistent with doing more than merely resting in bed all day.

12 *Garrison v. Colvin*, 759 F.3d 995, 1016 (9th Cir. 2014). Here, Plaintiff's ability to
13 go to the store was not sufficient to support the ALJ's determination.

14 The ALJ's sixth reason for rejecting Plaintiff's symptom statements, that his
15 performance on mental status examinations and observation by providers were
16 inconsistent with his allegations, is specific, clear and convincing. An ALJ may
17 cite inconsistencies between a claimant's testimony and the objective medical
18 evidence in discounting the claimant's testimony. *Bray v. Comm'r of Soc. Sec.*
19 *Admin.*, 554 F.3d 1219, 1227 (9th Cir. 2009). During the face-to-face interview
20 with a Social Security facilitator, Plaintiff had no difficulty understanding,
21 concentration, or answering questions. Tr. 187. In the March 2018 evaluation,

1 Plaintiff's Mental Status Examination showed that he could following a simple
2 three-step command. Tr. 301. In the March of 2019 evaluation, Plaintiff's Mental
3 Status Examination was normal and found that Plaintiff was able to follow a three-
4 step command. Tr. 355-56.

5 In conclusion, the ALJ provided specific, clear and convincing reasons to
6 support his determination that Plaintiff's symptom statements were not reliable.
7 *Carmickle*, 533 F.3d at 1163 (upholding an adverse credibility finding where the
8 ALJ provided four reasons to discredit the claimant, two of which were invalid);
9 *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1197 (9th Cir. 2004)
10 (affirming a credibility finding where one of several reasons was unsupported by
11 the record); *Tommasetti*, 533 F.3d at 1038 (an error is harmless when "it is clear
12 from the record that the . . . error was inconsequential to the ultimate nondisability
13 determination").

14 CONCLUSION

15 A reviewing court should not substitute its assessment of the evidence for
16 the ALJ's. *Tackett*, 180 F.3d at 1098. To the contrary, a reviewing court must
17 defer to an ALJ's assessment so long as it is supported by substantial evidence. 42
18 U.S.C. § 405(g). After review, the court finds the ALJ's decision is supported by
19 substantial evidence and free of harmful legal error.

20 ACCORDINGLY, IT IS HEREBY ORDERED:


21 1. Plaintiff's Motion for Summary Judgment, ECF No. 12, is **DENIED**.

1 2. Defendant's Motion for Summary Judgment, ECF No. 14, is

2 **GRANTED.**

3 The District Court Executive is hereby directed to enter this Order and
4 provide copies to counsel, enter judgment in favor of the **Defendant**, and **CLOSE**
5 the file.

6 **DATED** January 27, 2022.

7 
8 _____
LONNY R. SUKO
9 Senior United States District Judge