

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

Jul 09, 2019

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ADEM F.,¹

Plaintiff,

vs.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

No. 2:18-cv-00293-MKD

ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

ECF Nos. 13, 14

Before the Court are the parties' cross-motions for summary judgment. ECF Nos. 13, 14. The parties consented to proceed before a magistrate judge. ECF No. 6. The Court, having reviewed the administrative record and the parties' briefing, is fully informed. For the reasons discussed below, the Court denies Plaintiff's motion, ECF No. 13, and grants Defendant's motion, ECF No. 14.

¹ 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.

1 **JURISDICTION**

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

4 **STANDARD OF REVIEW**

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

16 In reviewing a denial of benefits, a district court may not substitute its
17 judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152,
18 1156 (9th Cir. 2001). If the evidence in the record “is susceptible to more than one
19 rational interpretation, [the court] must uphold the ALJ’s findings if they are
20 supported by inferences reasonably drawn from the record.” *Molina v. Astrue*, 674

1 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court “may not reverse an
2 ALJ’s decision on account of an error that is harmless.” *Id.* An error is harmless
3 “where it is inconsequential to the [ALJ’s] ultimate nondisability determination.”
4 *Id.* at 1115 (quotation and citation omitted). The party appealing the ALJ’s
5 decision generally bears the burden of establishing that it was harmed. *Shinseki v.*
6 *Sanders*, 556 U.S. 396, 409-10 (2009).

7 **FIVE-STEP EVALUATION PROCESS**

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

18 The Commissioner has established a five-step sequential analysis to
19 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §§
20 404.1520(a)(4)(i)-(v), 416.920(a)(4)(i)-(v). At step one, the Commissioner

1 considers the claimant’s work activity. 20 C.F.R. §§ 404.1520(a)(4)(i),
2 416.920(a)(4)(i). If the claimant is engaged in “substantial gainful activity,” the
3 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
4 404.1520(b), 416.920(b).

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

14 At step three, the Commissioner compares the claimant’s impairment to
15 severe impairments recognized by the Commissioner to be so severe as to preclude
16 a person from engaging in substantial gainful activity. 20 C.F.R. §§
17 404.1520(a)(4)(iii), 416.920(a)(4)(iii). If the impairment is as severe or more
18 severe than one of the enumerated impairments, the Commissioner must find the
19 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d), 416.920(d).

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

7 At step four, the Commissioner considers whether, in view of the claimant's
8 RFC, the claimant is capable of performing work that he performed in the past
9 (past relevant work). 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). If the
10 claimant is capable of performing past relevant work, the Commissioner must find
11 that the claimant is not disabled. 20 C.F.R. §§ 404.1520(f), 416.920(f). If the
12 claimant is incapable of performing such work, the analysis proceeds to step five.

13 At step five, the Commissioner considers whether, in view of the claimant's
14 RFC, the claimant is capable of performing other work in the national economy.
15 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). In making this determination,
16 the Commissioner must also consider vocational factors such as the claimant's age,
17 education, and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),
18 416.920(a)(4)(v). If the claimant is capable of adjusting to other work, the
19 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
20 404.1520(g)(1), 416.920(g)(1). If the claimant is not capable of adjusting to other

1 work, analysis concludes with a finding that the claimant is disabled and is
2 therefore entitled to benefits. 20 C.F.R. §§ 404.1520(g)(1), 416.920(g)(1).

3 The claimant bears the burden of proof at steps one through four above.
4 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to
5 step five, the burden shifts to the Commissioner to establish that 1) the claimant is
6 capable of performing other work; and 2) such work “exists in significant numbers
7 in the national economy.” 20 C.F.R. §§ 404.1560(c)(2), 416.960(c)(2); *Beltran v.*
8 *Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

9 ALJ’S FINDINGS

10 On November 12, 2015, Plaintiff applied both for Title II disability
11 insurance benefits and Title XVI supplemental security income benefits, with an
12 alleged disability onset date of April 25, 2015.² Tr. 448-65. The applications were
13 denied initially, Tr. 377-84, and on reconsideration, Tr. 387-92. Plaintiff appeared
14

15 _____
16 ² On April 24, 2015, an ALJ previously awarded Plaintiff a closed period of
17 disability, with disability beginning June 28, 2012, and ending November 19,
18 2013. Tr. 299-320. Thus, the relevant alleged period of disability for purposes of
19 Plaintiff’s current applications is April 25, 2015, the date after the ALJ’s prior
20 decision. 20 C.F.R. §§ 404.950(f), 404.955, 416.1450(f), 416.1455.

1 before an administrative law judge (ALJ) on August 21, 2017. Tr. 257-98. On
2 November 20, 2017, the ALJ denied Plaintiff's claim. Tr. 20-44.

3 At step one of the sequential evaluation process, the ALJ found Plaintiff has
4 not engaged in substantial gainful activity since April 25, 2015. Tr. 26. At step
5 two, the ALJ found that Plaintiff has the following severe impairments:
6 degenerative disc disease of the lumbar and cervical spine status post fusion C5-7;
7 status post bilateral shoulder surgeries; status post left knee surgeries;
8 cardiomyopathy; irritable bowel syndrome; depressive disorder; and anxiety
9 disorder. Tr. 26.

10 At step three, the ALJ found Plaintiff does not have an impairment or
11 combination of impairments that meets or medically equals the severity of a listed
12 impairment. Tr. 28. The ALJ then concluded that Plaintiff has the RFC to perform
13 sedentary work with the following limitations:

14 [Plaintiff] can stand and walk for about 2 hours in an 8-hour day
15 and sit up to 8 hours in an 8-hour day with a sit/stand option
16 (change from a sitting to a standing position and vice versa) every
17 30 minutes for five minutes while remaining at the workstation. He
18 can occasionally climb ramps and stairs and stoop. He cannot
19 engage in climbing ladders, ropes, or scaffolds, crouching,
20 kneeling, or crawling. He can reach overhead bilaterally on an
occasional basis and engage in handling and fingering bilaterally
frequently. He needs to avoid all use of moving dangerous
machinery and unprotected heights. He is capable of no more than
simple, routine, and repetitive tasks in work that would be low
stress (defined as not requiring the worker to cope with work-
related circumstances that could be dangerous to the worker or to
others), with no production pace or high sales quota-type work. He

1 would be limited to no more than occasional interaction with the
2 public. He is able to work around coworkers but no team or tandem
work.

3 Tr. 29-30.

4 At step four, the ALJ found Plaintiff unable to perform any past relevant
5 work. Tr. 35. At step five, the ALJ determined that, considering Plaintiff's age,
6 education, work experience, and RFC, there were jobs that exist in significant
7 numbers in the national economy that Plaintiff can perform, such as: bench hand,
8 garment sorter, and mail clerk. Tr. 36. Therefore, the ALJ concluded Plaintiff was
9 not under a disability, as defined in the Social Security Act, from the amended
10 alleged disability onset date of April 25, 2015, though the date of the decision. Tr.
11 37.

12 On August 30, 2018, the Appeals Council denied review of the ALJ's
13 decision, Tr. 1-7, making the ALJ's decision the Commissioner's final decision for
14 purposes of judicial review. *See* 42 U.S.C. § 1383(c)(3).

15 ISSUES

16 Plaintiff seeks judicial review of the Commissioner's final decision denying
17 him disability insurance benefits under Title II and supplemental security income
18 benefits under Title XVI of the Social Security Act. Plaintiff raises the following
19 issues for review:

- 20 1. Whether the ALJ properly evaluated Plaintiff's symptom claims; and

1 2. Whether the ALJ properly evaluated Plaintiff's RFC.

2 ECF No. 13 at 11-12.

3 **DISCUSSION**

4 **A. Plaintiff's Symptom Claims**

5 Plaintiff contends the ALJ failed to rely on clear and convincing reasons in
6 discrediting his statements about the intensity, persistence, and other limiting
7 effects of his symptoms. ECF No. 13 at 14-16.

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

17 Second, "[i]f the claimant meets the first test and there is no evidence of
18 malingering, the ALJ can only reject the claimant's testimony about the severity of
19 the symptoms if [the ALJ] gives 'specific, clear and convincing reasons' for the
20 rejection." *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (citations

1 omitted). General findings are insufficient. The ALJ must identify what symptom
2 claims are being discounted and what evidence undermines these claims. *Id.*
3 (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995)). “The clear and
4 convincing [evidence] standard is the most demanding required in Social Security
5 cases.” *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v.*
6 *Comm’r 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 the claimant takes or taken to alleviate pain or other
12 symptoms; 5) treatment, other than medication, the claimant receives or received
13 for relief of pain or other symptoms; 6) any measures other than treatment the
14 claimant uses or used to relieve pain or other symptoms; and 7) any other factors
15 concerning the claimant’s functional limitations and restrictions due to pain or
16 other symptoms. SSR 16-3p; 20 C.F.R. § 416.929(c)(1)-(3). The ALJ is instructed
17 to “consider all of the evidence in an individual’s record,” “to determine how
18 symptoms limit ability to perform work-related activities.” SSR 16-3p.

19 While the ALJ determined that Plaintiff’s medically determinable
20 impairments could reasonably be expected to cause some of the alleged symptoms,

1 the ALJ discounted Plaintiff's claims concerning the intensity, persistence, and
2 limiting effects of the symptoms. Tr. 31.

3 *1. Inconsistent with the Objective Medical Evidence*

4 The ALJ found Plaintiff's reported symptoms related to his heart, back,
5 lower extremities, and upper extremities, including his hands, were inconsistent
6 with the objective findings, including imaging and examination findings. Tr. 30-
7 31. An ALJ may not discredit a claimant's symptom testimony and deny benefits
8 solely because the degree of the symptoms alleged is not supported by the
9 objective medical evidence. *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir.
10 2001); *Bunnell v. Sullivan*, 947 F.2d 341, 346-47 (9th Cir. 1991). However, the
11 objective medical evidence is a relevant factor, along with the medical source's
12 information about the claimant's pain or other symptoms, in determining the
13 severity of a claimant's symptoms and their disabling effects. *Rollins*, 261 F.3d at
14 857; 20 C.F.R. §§ 404.1529(c)(2), 416.929(c)(2). Here, the ALJ found that
15 Plaintiff routinely had normal gait, normal neurological findings, normal range of
16 motion in the neck, and normal strength in his upper and lower extremities. Tr. 32
17 (citing Tr. 655, 697, 718, 855, 865, 921-22, 925, 936, 937, 947-48, 1071). As to
18 Plaintiff's hands, the ALJ highlighted that Plaintiff presented once with decreased
19 grip strength but that the x-rays of his hands were negative. Tr. 32 (citing Tr. 609-
20 36, 958-59, 963, 947-48, 943). On this record, the ALJ's finding that Plaintiff's

1 physical symptoms were not as disabling as Plaintiff reported and instead were
2 consistent with sedentary work is rational and supported by substantial evidence.
3 *See Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008) (“[W]hen the
4 evidence is susceptible to more than one rational interpretation” the court will not
5 reverse the ALJ’s decision.).

6 2. *Disability-Seeking Behavior and Inconsistent Statements*

7 The ALJ also found Plaintiff’s allegations of disabling pain inconsistent with
8 his statements to his treatment providers. Tr. 22. In evaluating a claimant’s
9 symptom claims, an ALJ may consider the consistency of an individual’s own
10 statements made in connection with the disability-review process with any other
11 existing statements or conduct under other circumstances. *Smolen v. Chater*, 80
12 F.3d 1273, 1284 (9th Cir. 1996) (The ALJ may consider “ordinary techniques of
13 credibility evaluation,” such as reputation for lying, prior inconsistent statements
14 concerning symptoms, and other testimony that “appears less than candid.”).
15 Moreover, evidence that the claimant was motivated by secondary gain is
16 sufficient to support an ALJ’s rejection of testimony. *Matney ex rel. Matney v.*
17 *Sullivan*, 981 F.2d 1016, 1020 (9th Cir. 1992). Therefore, the tendency to
18 exaggerate or engage in manipulative conduct during the administrative process is
19 a permissible reason to discount the credibility of the claimant’s reported
20 symptoms. *Tonapetyan v. Halter*, 242 F.3d 1144, 1148 (9th Cir. 2001). Here, the

1 ALJ found, based on Plaintiff's inconsistent statements, that Plaintiff exhibited
2 disability-seeking behavior. Tr. 31. For instance, the ALJ noted that Plaintiff
3 accused his doctors of lying about his "disability" and that he made inconsistent
4 statements about his lawn care, sleeping, anabolic steroid and other drug use, and
5 reasons for not engaging in counseling. Tr. 31 (citing Tr. 1001 (noting that
6 Plaintiff was upset about the ECHO results, which could negatively impact his
7 disability application); Tr. 1102 (discussing Plaintiff's frustration with Sandra
8 Dickey, PAC and that she was not writing a letter in support of his disability
9 application); Tr. 717 (reporting that he began using marijuana when he was fifteen
10 and began injecting steroids twice a week when body building for two months and
11 then stopped); Tr. 851 (reporting sleeping 15-16 hours a day and using steroids for
12 seventeen years); Tr. 716, 719 (reporting sleeping three to six hours per night and
13 waking up several times due to pain); Tr. 678 (noting ten-year steroid use); Tr. 706
14 (noting that Plaintiff was not interested in counseling); Tr. 698 (noting that
15 Plaintiff was instructed to minimize his marijuana use as the prescribed
16 medications were to help with sleep and pain); Tr. 702 (noting the presence of
17 TCA and cannabinoids in Plaintiff's urine test); Tr. 652, 655 (buying hydrocodone
18 "off the streets" because he ran out of pain medicine)). In addition, the ALJ
19 highlighted that Plaintiff turned down treatment for trigger finger because he was
20 afraid of needles, even though Plaintiff previously had several procedures

1 involving needles without any notation in the record as to hesitancy about needles.
2 Tr. 32. On this record, that Plaintiff offered inconsistent statements, which
3 indicated that he exaggerated his symptoms to facilitate his disability applications,
4 is a clear and convincing reason, supported by substantial evidence, to discount
5 Plaintiff's reported physical and mental symptoms.

6 *3. Failure to Participate in Treatment*

7 The ALJ discounted Plaintiff's reported mental health symptoms because
8 Plaintiff elected not to participate in counseling. Tr. 31. An ALJ may discredit a
9 claimant's symptom complaints if the claimant fails to show good reason for
10 failing to follow treatment recommendations. *Smolen*, 80 F.3d at 1284. Here, the
11 ALJ found that "[d]espite being strongly encouraged to engage in counseling on
12 multiple occasions," Plaintiff had not done so. Tr. 31 (citing Tr. 685 (referring
13 Plaintiff to mental health counseling); Tr. 691 (stressing that it was "imperative"
14 that Plaintiff start weekly counseling to reduce his stress/anxiety); Tr. 699 ("Patient
15 to call Frontier Behavior Health again and if unable to be seen call my office back
16 or find a different counselor.")). While Plaintiff offered various reasons for not
17 attending counseling, such as that he could not go because of his pain and irritable
18 bowel symptoms, he also stated that he was not interested in counseling and that
19 Frontier Behavioral Health declined treating him. Tr. 31 (citing Tr. 696-97, 706).
20 On this record, which reveals that mental health counseling was recommended in

1 part to reduce Plaintiff's IBS symptoms and that his treating provider Dr. Mark
2 Gaulke requested that Plaintiff follow-up with him if Frontier Behavioral Health
3 would not provide counseling, Tr. 685-99, it was reasonable for the ALJ to
4 discount Plaintiff's mental health symptoms because he did not participate in the
5 prescribed treatment to reduce his symptoms. This was a clear and convincing
6 reason, supported by substantial evidence, to discount Plaintiff's reported
7 symptoms.

8 4. *Inconsistent with Work Cessation*

9 The ALJ also discounted Plaintiff's allegation of total disability because he
10 stopped work due to lack of work and not being paid, rather than an impairment-
11 related reason. Tr. 32. An ALJ may consider that a claimant stopped working for
12 reasons unrelated to the allegedly disabling condition when weighing the
13 Plaintiff's symptom reports. *Bruton v. Massanari*, 268 F.3d 824, 828 (9th Cir.
14 2001). Here, the ALJ highlighted that, during a psychological diagnostic
15 evaluation in 2016, Plaintiff shared that he stopped working five years earlier
16 because there were no painting jobs available. Tr. 717. On this record, the ALJ's
17 finding that Plaintiff stopped work for a reason unrelated to an impairment is a
18 rational interpretation of the record, supported by substantial evidence. When
19 Plaintiff's work-cessation reason is considered in light of the objective medical
20 evidence and Plaintiff's inconsistent statements and failure to participate in mental-

1 health counseling, this reason served as a clear and convincing reason to discount
2 Plaintiff's reported symptoms.

3 5. *Inconsistent with Daily Activities*

4 The ALJ also found Plaintiff's daily living activities were inconsistent with
5 his allegation of total disability. Tr. 31-32. The ALJ may consider a claimant's
6 activities that undermine reported symptoms. *Rollins*, 261 F.3d at 857. If a
7 claimant can spend a substantial part of the day engaged in pursuits involving the
8 performance of exertional or non-exertional functions, the ALJ may find these
9 activities inconsistent with the reported inability to work. *Fair v. Bowen*, 885 F.2d
10 597, 603 (9th Cir. 1989); *Molina*, 674 F.3d at 1113. "While a claimant need not
11 vegetate in a dark room in order to be eligible for benefits, the ALJ may discount a
12 claimant's symptom claims when activities "contradict claims of a totally
13 debilitating impairment." *Molina*, 674 F.3d at 1112-13. Here, the ALJ highlighted
14 that Plaintiff cooked simple meals with his mother, took care of three dogs,
15 vacuumed and mopped, cleaned the bathroom, did his laundry, washed dishes,
16 drove, shopped, mowed the lawn, watched television, and handled his own money.
17 Tr. 31-32. The ALJ deemed these independent living activities to be inconsistent
18 with Plaintiff's reports of a disability. Tr. 32. Although the ALJ accurately
19 summarizes the Plaintiff's reported activities, these activities as briefly described
20 in the record, are insufficient—either individually or cumulatively—to indicate

1 that Plaintiff's capacities are transferable to a work setting or contradict claims of a
2 totally debilitating impairment. This was not a clear and convincing reason to
3 discount Plaintiff's reported symptoms. Any error is harmless though because the
4 ALJ identified several other clear and convincing reasons to discount Plaintiff's
5 symptom claims. *See Carmickle v. Astrue*, 533 F.3d 1155, 1162-63 (9th Cir.
6 2008); *Molina*, 674 F.3d at 1115.

7 **B. RFC**

8 Plaintiff contends the ALJ failed to include all of Plaintiff's restrictions,
9 including his absenteeism resulting from his anxiety and IBS, into the RFC. ECF
10 No. 13 at 16-17. Plaintiff's argument is based entirely on the assumption that the
11 ALJ erred in considering Plaintiff's physical and mental symptom claims. *Id.* For
12 reasons discussed *supra*, the ALJ's consideration of Plaintiff's symptom reports is
13 legally sufficient and supported by substantial evidence. Moreover, Plaintiff did
14 not challenge the weight that the ALJ gave to the medical opinions; therefore,
15 Plaintiff waived challenging the ALJ's treatment of these medical opinions. *See*
16 *Bray v. Comm'r of Soc. Sec. Admin*, 554 F.3d 1219, 1226 n.7 (9th Cir. 2009)
17 (recognizing that a failure to assert an argument constitutes waiver of that
18 argument). The ALJ crafted an RFC that contained several limitations, including
19 limiting Plaintiff to sedentary work with a sit/stand option and other postural
20 limitations; occasional overhead reaching; frequent handling and fingering; simple,

1 routine, and repetitive low-stress work; no high production pace or quota;
2 occasional interaction with the public; and no team or tandem coworker work. Tr.
3 30. This RFC is supported by substantial evidence. *See Stubbs-Danielson v.*
4 *Astrue*, 539 F.3d 1169, 1174 (9th Cir. 2008).

5 **CONCLUSION**

6 Having reviewed the record and the ALJ's findings, the Court concludes the
7 ALJ's decision is both supported by substantial evidence and free of harmful legal
8 error. Accordingly, **IT IS HEREBY ORDERED:**

9 1. Plaintiff's Motion for Summary Judgment, **ECF No. 13**, is **DENIED**.

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

11 **GRANTED.**

12 3. The Clerk's Office shall enter **JUDGMENT** in favor of Defendant.

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

15 DATED July 9, 2019.

16 *s/Mary K. Dimke*
17 MARY K. DIMKE
18 UNITED STATES MAGISTRATE JUDGE
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