

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

Apr 21, 2020

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

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DAVID R.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

No. 2:19-cv-00156-SMJ

**ORDER DENYING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT AND GRANTING  
THE COMMISSIONER'S  
MOTION FOR SUMMARY  
JUDGMENT**

Before the Court, without oral argument, are the parties' cross-motions for summary judgment, ECF Nos. 13, 14. Plaintiff David R. appeals the Administrative Law Judge's (ALJ) denial of his application for Supplemental Security Income (SSI) benefits. Plaintiff alleges the ALJ (1) improperly discounted Plaintiff's symptom testimony and (2) improperly discounted or dismissed medical opinions. ECF No. 13. The Commissioner of Social Security ("Commissioner") asks the Court to affirm the ALJ's decision. ECF No. 14.

Upon reviewing the administrative record, the parties' briefs, and the relevant authority, the Court is fully informed. For the reasons set forth below, the Court finds the ALJ did not err in assigning limited weight to the testimony of Plaintiff or

ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT  
AND GRANTING THE COMMISSIONER'S MOTION FOR SUMMARY  
JUDGMENT – 1

1 in weighing the opinions of three medical professionals regarding Plaintiff's  
2 limitations. Accordingly, the Court denies Plaintiff's motion for summary judgment  
3 and grants the Commissioner's motion for summary judgment.

#### 4 **BACKGROUND<sup>1</sup>**

5 Plaintiff first applied for SSI in 2012, the Commissioner denied Plaintiff's  
6 application, and this Court granted the Commissioner's motion for summary  
7 judgment. AR 93–134.<sup>2</sup> Plaintiff again applied for SSI benefits on October 21,  
8 2016. AR 258–63. The Commissioner denied Plaintiff's application on January 27,  
9 2017, *see* AR 170–73, and denied it again on reconsideration, *see* AR 150–67. At  
10 Plaintiff's request, a hearing was held before ALJ Lori L. Freund. AR 37–92. The  
11 ALJ denied Plaintiff benefits on June 1, 2018. AR 12–36. The Appeals Council  
12 denied Plaintiff's request for review on March 30, 2019. AR 1–6. Plaintiff then  
13 appealed to this Court under 42 U.S.C. §§ 405(g), 1383(c)(3). ECF No. 1.

#### 14 **DISABILITY DETERMINATION**

15 A “disability” is defined as the “inability to engage in any substantial gainful  
16 activity by reason of any medically determinable physical or mental impairment  
17 which can be expected to result in death or which has lasted or can be expected to

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19 <sup>1</sup> The facts, thoroughly stated in the record and the parties' briefs, are only briefly  
summarized here.

20 <sup>2</sup> References to the administrative record (AR), ECF No. 8, are to the provided page  
numbers to avoid confusion.

1 last for a continuous period of not less than twelve months.” 42 U.S.C.  
2 §§ 423(d)(1)(A), 1382c(a)(3)(A). The decision-maker uses a five-step sequential  
3 evaluation process to determine whether a claimant is disabled. 20 C.F.R.  
4 §§ 404.1520, 416.920.

5 Step one assesses whether the claimant is engaged in substantial gainful  
6 activities. If he is, benefits are denied. 20 C.F.R. §§ 404.1520(b), 416.920(b). If he  
7 is not, the decision-maker proceeds to step two.

8 Step two assesses whether the claimant has a medically severe impairment or  
9 combination of impairments. 20 C.F.R. §§ 404.1520(c), 416.920(c). If the claimant  
10 does not, the disability claim is denied. If the claimant does, the evaluation proceeds  
11 to the third step.

12 Step three compares the claimant’s impairment with a number of listed  
13 impairments acknowledged by the Commissioner to be so severe as to preclude  
14 substantial gainful activity. 20 C.F.R. §§ 404.1520(d), 404 Subpt. P App. 1,  
15 416.920(d). If the impairment meets or equals one of the listed impairments, the  
16 claimant is conclusively presumed to be disabled. If the impairment does not, the  
17 evaluation proceeds to the fourth step.

18 Step four assesses whether the impairment prevents the claimant from  
19 performing work he has performed in the past by examining the claimant’s residual  
20 functional capacity, or RFC. 20 C.F.R. §§ 404.1520(e), 416.920(e). If the claimant

1 is able to perform his previous work, he is not disabled. If the claimant cannot  
2 perform this work, the evaluation proceeds to the fifth step.

3 Step five, the final step, assesses whether the claimant can perform other  
4 work in the national economy in view of his age, education, and work experience.  
5 20 C.F.R. §§ 404.1520(f), 416.920(f); *see Bowen v. Yuckert*, 482 U.S. 137 (1987).  
6 If the claimant can, the disability claim is denied. If the claimant cannot, the  
7 disability claim is granted.

8 The burden of proof shifts during this sequential disability analysis. The  
9 claimant has the initial burden of establishing a prima facie case of entitlement to  
10 disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th Cir. 1971). The  
11 burden then shifts to the Commissioner to show (1) the claimant can perform other  
12 substantial gainful activity, and (2) that a “significant number of jobs exist in the  
13 national economy,” which the claimant can perform. *Kail v. Heckler*, 722  
14 F.2d 1496, 1498 (9th Cir. 1984). A claimant is disabled only if his impairments are  
15 of such severity that he is not only unable to do his previous work but cannot,  
16 considering his age, education, and work experiences, engage in any other  
17 substantial gainful employment that exists in the national economy. 42 U.S.C.  
18 §§ 423(d)(2)(A), 1382c(a)(3)(B).

### 19 ALJ FINDINGS

20 At step one, the ALJ found Plaintiff had not engaged in substantial gainful

1 activity since the application date. AR 18.

2 At step two, the ALJ found that Plaintiff had five medically determinable  
3 severe impairments: a history of alcohol abuse disorder, unspecified depressive  
4 disorder, unspecified anxiety disorder, unspecified personality disorder, and  
5 chronic episodes of gout. AR 18.

6 At step three, the ALJ found that Plaintiff did not have an impairment or  
7 combination of impairments that met or medically equaled the severity of a listed  
8 impairment. AR 22.

9 At step four, the ALJ found that Plaintiff had an RFC sufficient to perform  
10 medium work as defined in 20 C.F.R. §§ 404.967(c) with the following limitations:

11 “[Plaintiff] can lift/carry up to fifty pounds occasionally and twenty-five pounds  
12 frequently, sit at least 6 hours in an 8-hour workday, and stand/walk 2 hours at one  
13 time for a total of at least 6 hours in an 8-hour workday with normal breaks.

14 [Plaintiff] is limited to frequent operation of foot controls bilaterally; occasional  
15 climbing of ladders, ropes and scaffolds; occasional kneeling, crouching and  
16 crawling; frequent climbing of ramps and stairs with the use of a handrails; avoid  
17 even moderate exposure to unprotected heights; can understand, remember and  
18 carry out both simple repetitive tasks/instructions as well as detailed and complex  
19 tasks/instructions; no production rate or fast-paced work; no work requiring a lot of  
20 individual decision-making or judgment; no more than occasional changes in work

1 setting; no interaction with the public; and can have superficial to occasional  
2 interaction with coworkers and supervisors, but no tandem tasks could be  
3 performed.” AR 23.

4 In reaching this determination, the ALJ gave great weight to the opinions of  
5 Dr. Kingsley Ugorji, M.D., and J.D. Fitterer, M.D. AR 28. The ALJ gave some  
6 weight to the opinions of Stephen Rubin, Ph.D., Dan Donahue, Ph.D., and Kristine  
7 Harrison, Psy.D., and gave little weight to the opinions of Kayleen Islam-Zwart,  
8 Ph.D., and John F. Arnold, Ph.D. *Id.* at 28–29.

9 At step five, the ALJ found Plaintiff had no past relevant work but that  
10 Plaintiff could perform other jobs existing in the national economy including  
11 janitor, floor waxer, and merchandise marker. *Id.* at 30–31.

## 12 STANDARD OF REVIEW

13 The Court must uphold an ALJ’s determination that a claimant is not disabled  
14 if the ALJ applied the proper legal standards and there is substantial evidence in the  
15 record, considered as a whole, to support the ALJ’s decision. *Molina v. Astrue*, 674  
16 F.3d 1104, 1110 (9th Cir. 2012) (citing *Stone v. Heckler*, 761 F.2d 530, 531 (9th  
17 Cir. 1985)). “Substantial evidence ‘means such relevant evidence as a reasonable  
18 mind might accept as adequate to support a conclusion.’” *Id.* at 1110 (quoting  
19 *Valentine v. Comm’r Soc. Sec. Admin.*, 574 F.3d 685, 690 (9th Cir. 2009)). This  
20 must be more than a mere scintilla but may be less than a preponderance. *Id.*

1 at 1110–11 (citation omitted). If the evidence supports more than one rational  
2 interpretation, the Court must uphold an ALJ’s decision if it is supported by  
3 inferences reasonably drawn from the record. *Id.*; *Allen v. Heckler*, 749 F.2d 577,  
4 579 (9th Cir. 1984). The Court will not reverse an ALJ’s decision if the errors  
5 committed by the ALJ were harmless. *Molina*, 674 F.3d at 1111 (citing *Stout v.*  
6 *Comm’r, Soc. Sec. Admin.*, 454 F.3d 1050, 1055–56 (9th Cir. 2006)). “[T]he burden  
7 of showing that an error is harmful normally falls upon the party attacking the  
8 agency’s determination.” *Shinseki v. Sanders*, 556 U.S. 396, 409 (2009).

## 9 ANALYSIS

### 10 **A. The ALJ did not err in discounting Plaintiff’s subjective symptom** 11 **testimony**

12 Plaintiff first assigns error to the ALJ’s decision to discount Plaintiff’s own  
13 subjective symptom testimony. ECF No. 13 at 12–14. The Commissioner contends  
14 the ALJ properly discounted Plaintiff’s symptom testimony because it was  
15 inconsistent with other evidence in the record. ECF No. 14 at 3–7.

16 Where a claimant presents objective medical evidence of impairments that  
17 could reasonably produce the symptoms complained of, an ALJ may reject the  
18 claimant’s testimony about the severity of his symptoms only for “specific, clear  
19 and convincing reasons.” *Burrell v. Colvin*, 775 F.3d 1133, 1137 (9th Cir. 2014).

20 The ALJ’s findings must be sufficient “to permit the court to conclude that the ALJ

1 did not arbitrarily discredit claimant's testimony." *Tommasetti v. Astrue*, 533  
2 F.3d 1035, 1039 (9th Cir. 2008). General findings are insufficient. *Lester v.*  
3 *Chater*, 81 F.3d 821, 834 (9th Cir. 1995). In evaluating the claimant's credibility,  
4 the "ALJ may weigh inconsistencies between the claimant's testimony and his or  
5 her conduct, daily activities, and work record, among other factors." *Bray*, 554 F.3d  
6 at 1227. The Court may not second guess the ALJ's credibility findings that are  
7 supported by substantial evidence. *Tommasetti*, 533 F.3d at 1039.

8         The ALJ found that Plaintiff's medically determinable impairments could  
9 reasonably be expected to cause the alleged symptoms, but rejected Plaintiff's  
10 symptom testimony concerning the intensity, persistence, and limiting effects as not  
11 entirely consistent with the medical evidence and other evidence in the record.  
12 AR 25. Regarding Plaintiff's gout, the ALJ determined that the "totality of the  
13 record does not fully support a finding that this condition is disabling and prohibits  
14 claimant from performing all work." *Id.* The ALJ conducted a review of the medical  
15 records, noting that the only regular treatment Plaintiff received for gout is  
16 Naproxen, that he has declined a gout prophylaxis medication, and that he has  
17 reported that Naproxen works well in controlling his symptoms. *Id.* The ALJ also  
18 discussed physical examination findings and medical opinions, including the  
19 opinion of Plaintiff's treating physician Dr. Kingsley Ugorji, M.D., that Plaintiff is  
20 capable of performing medium work. *Id.*



1           Regarding Plaintiff’s mental impairments, the ALJ found the objective  
2 medical evidence did not support the level of limitation Plaintiff claimed and that  
3 Plaintiff’s statements concerning the intensity, persistence, and limiting effects  
4 were inconsistent with the record when viewed as a whole. *Id.* at 25–26. The ALJ  
5 observed Plaintiff had only received routine, conservative treatment for his mental  
6 health issues, and discussed his mental health history from 2016 through January  
7 2018. *Id.* at 25. The ALJ noted that Plaintiff stopped receiving services at Frontier  
8 Behavioral Health in April 2016, stopped taking Prozac several months prior to  
9 October 2016, informed his physician that he did not want any psychotropic  
10 medication in October 2016, and in December 2016 stated he did not want to engage  
11 in therapy. AR 26. The record not only supports these conclusions, but also  
12 indicates that Plaintiff denied use of medication for his mental health and indicated  
13 he did not require mental health medication. AR 438.

14           The ALJ further found that Plaintiff’s treatment records from April 2017  
15 forward show that Plaintiff “made good progress in improving his anxiety,  
16 depression, and insomnia symptoms, and that his mental status examinations were  
17 largely within normal limits.” AR 26. The records supports these findings. *See*  
18 AR 594 (reflecting Plaintiff’s discharge from mental health treatment on basis that  
19 he “no longer meets medical necessity”). The ALJ also noted that while Plaintiff  
20 again received mental health services in April 2017, his stated reason for seeking

1 treatment was not that he felt he needed treatment, but because he was seeking SSI  
2 for anxiety, depression, and medical reasons. AR 26. The ALJ also stated Plaintiff  
3 ceased mental health treatment “because” counseling was no longer a requirement  
4 to receive state benefits. *Id.* The record is unclear whether Plaintiff sought to end  
5 treatment or merely did not object when his counselor suggested discharging him.  
6 AR 594. The ALJ did note, however, that Plaintiff has not sought mental health  
7 treatment since January 2018 and takes no psychotropic medications. AR 26. The  
8 ALJ specifically relied on the findings of Dr. Rubin, who found Plaintiff’s mental  
9 impairments non-severe and opined they would not impose any significant work-  
10 related limitations. *Id.*

11         The ALJ also discussed inconsistencies between Plaintiff’s testimony and his  
12 medical records. First, the ALJ’s findings regarding Plaintiff’s anxiety-induced  
13 vomiting are not entirely supported by the record. AR 26. Plaintiff testified he has  
14 episodes of anxiety-induced vomiting every few months, but the ALJ found that  
15 there were no records of Plaintiff seeking treatment for this and that Plaintiff  
16 specifically denied nausea and vomiting in December 2015, March 2016, and  
17 March 2017. AR 26. Contrary to the ALJ’s statement, there are records of Plaintiff  
18 reporting vomiting to a mental health provider in September and October 2017.  
19 AR 597–98. The Court, therefore, rejects this finding. Similarly unsupported was  
20 the ALJ’s finding that Plaintiff’s level of daily activity was inconsistent with a

1 person who had been bedridden for a week and a half. AR 26; AR 303. The ALJ  
2 did not make clear why Plaintiff's statement that he had once been bedridden for a  
3 specified time period is inconsistent with daily activities that took place outside of  
4 this time period. The Court, therefore, also rejects this finding.

5       However, the ALJ made other findings, which do find support in the record,  
6 regarding inconsistencies between Plaintiff's testimony and his statements to  
7 medical providers. For example, Plaintiff testified at the hearing that the main  
8 problem areas for his gout were his two large toes and his elbows. AR 67–68.  
9 However, the ALJ found there were no medical records of Plaintiff complaining of  
10 pain from gout in his toes or feet. AR 26. The ALJ also noted that while Plaintiff  
11 was receiving mental health treatment, he reported increased productivity, which  
12 was inconsistent with his testimony regarding his severe lack of motivation, and  
13 that Plaintiff's insomnia and nightmares decreased with medication. *Id.* The ALJ  
14 also found that Plaintiff claimed cognitive issues regarding memory, concentration,  
15 and task completion that were inconsistent with mental status examinations  
16 showing intact memory, attention, and concentration, and were also inconsistent  
17 with Plaintiff's activities, including his ability to read non-fiction books and manage  
18 his money. *Id.* The ALJ also listed inconsistent statements Plaintiff made  
19 throughout the record and during testimony about his past drug and alcohol use. *Id.*

20

1 Contrary to Plaintiff’s arguments, the ALJ did not rely on these findings of  
2 inconsistency for an impermissible purpose beyond determining Plaintiff’s  
3 credibility. *Compare Tommasetti*, 533 F.3d at 1039 (“The ALJ may consider many  
4 factors in weighing a claimant’s credibility, including . . . ordinary techniques of  
5 credibility evaluation, such as the claimant’s reputation for lying, prior inconsistent  
6 statements concerning the symptoms, and other testimony by the claimant that  
7 appears less than candid . . .” (internal quotation omitted)), *with Orn v. Astrue*, 495  
8 F.3d 625, 639 (9th Cir. 2007) (finding ALJ improperly discounted claimant’s  
9 testimony where ALJ found the daily activities themselves indicated claimant was  
10 more functional than alleged, but those daily activities did not contradict testimony  
11 or reflect any transferrable work skills).

12 Regarding Plaintiff’s mental health, the ALJ did not improperly cherry-pick  
13 inconsistent reports of positive mental health symptoms outside the context of  
14 treatment, remission, or overall improvement. *See Garrison v. Colvin*, 759  
15 F.3d 995, 1018 (9th Cir. 2014) (finding ALJ erred by “improperly singl[ing] out a  
16 few episodes of temporary well-being from a sustained period of impairment”). Nor  
17 did the ALJ in this case “chastise one with a mental impairment for the exercise of  
18 poor judgment in seeking rehabilitation.” *Nguyen v. Chater*, 100 F.3d 1462, 1465  
19 (9th Cir. 1996) (quoting *Blankenship v. Bowen*, 874 F.2d 1116, 1124 (6th  
20 Cir. 1989)). Rather, the ALJ evaluated Plaintiff’s longitudinal mental health

1 treatment, noting that Plaintiff affirmatively declined needing mental health  
2 medication and treatment and finding that Plaintiff improved when he attended  
3 counseling. Overall, these findings are sufficient “to permit the court to conclude  
4 that the ALJ did not arbitrarily discredit claimant’s testimony.” *Tommasetti v.*  
5 *Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008).

6 **B. The ALJ did not err in discounting the opinions of Dr. Arnold, Ph.D.,**  
7 **Dr. Islam-Zwart, Ph.D., and Dr. Rubin, Ph.D.**

8 Plaintiff next argues the ALJ erred by giving little weight to the opinions of  
9 examining providers Kayleen Islam-Zwart, Ph.D., and John F. Arnold, Ph.D., and  
10 “rejecting most of the opinions of the medical advisor Stephen Rubin, Ph.D.” ECF  
11 No. 13 at 15. The Commissioner argues the ALJ reasonably weighed these medical  
12 opinions. ECF No. 14 at 7.

13 For SSI appeal purposes, there are three types of physicians: “(1) those who  
14 treat the claimant (treating physicians); (2) those who examine but do not treat the  
15 claimant (examining physicians); and (3) those who neither examine nor treat the  
16 claimant [but who review the claimant’s file] (non-examining physicians).”  
17 *Holohan v. Massanari*, 246 F.3d 1195, 1201–02 (9th Cir. 2001). Generally, a  
18 treating physician’s opinion carries more weight than an examining physician’s,  
19 and an examining physician’s opinion carries more weight than a non-examining  
20 physician’s. *Id.* at 1202. “In addition, the regulations give more weight to opinions

1 that are explained than to those that are not, and to the opinions of specialists  
2 concerning matters relating to their specialty over that of nonspecialists.” *Id.*

3 If a treating or examining physician’s opinion is uncontradicted, the ALJ may  
4 reject it only for “clear and convincing reasons that are supported by substantial  
5 evidence.” *Bayliss*, 427 F.3d at 1216. “If a treating or examining doctor’s opinion  
6 is contradicted by another doctor’s opinion, an ALJ may only reject it by providing  
7 specific and legitimate reasons that are supported by substantial evidence.” *Id.*  
8 (citing *Lester*, 81 F.3d 821, 830–31).

9 **1. The ALJ did not err in weighing Dr. Rubin’s opinions**

10 Plaintiff argues the ALJ failed to provide specific and legitimate reasons for  
11 rejecting portions of Dr. Rubin’s testimony. ECF No. 13 at 15. The ALJ gave some  
12 weight to Dr. Rubin’s opinions, finding Dr. Rubin’s overall conclusion that  
13 Plaintiff’s mental impairment does not prohibit him from performing basic work  
14 activities was “well supported by the record as a whole, the largely benign mental  
15 status findings . . . , and [Plaintiff’s] demonstrated functional abilities.” AR 28. The  
16 ALJ, however, discounted Dr. Rubin’s opinions because he found that Dr. Rubin’s  
17 testimony was “internally inconsistent in that he found no severe mental  
18 impairments yet found two of the ‘paragraph B’ criteria to be within the moderate  
19 level.” *Id.* This finding is supported by the record, and that Dr. Rubin’s opinions  
20 were internally inconsistent was a specific and legitimate reason to discount his

1 opinion. *Houghton v. Comm’r, S.S.A.*, 493 F. App’x 843, 845 (9th Cir. 2012)  
2 (holding ALJ’s finding that physicians’ opinions were “internally inconsistent”  
3 constituted specific and legitimate basis for discounting them).

4 Plaintiff argues that the ALJ “rejected” most of Dr. Rubin’s opinions. ECF  
5 No. 13 at 15. Plaintiff does not specify what opinions the ALJ allegedly rejected.  
6 *Id.* In summarizing Dr. Rubin’s testimony, Plaintiff’s focus appears to be on Dr.  
7 Rubin’s statement that Plaintiff would have some level of absenteeism at work,  
8 though Dr. Rubin indicated he did not know how many days per month Plaintiff  
9 would be absent. *Id.* at 8–9; AR 55. When the ALJ questioned Dr. Rubin regarding  
10 Plaintiff’s likely absenteeism, Dr. Rubin further indicated that he would like “to see  
11 him stock part-time, and work several days a week through the hours of four hours  
12 a day, until he build[s] up some stamina,” noting that Plaintiff would likely not  
13 “succeed very well at all at this point.” AR 55–56. Dr. Rubin explained that  
14 “stamina” referred to mental stamina and that “the idea of going to work” would be  
15 difficult for Plaintiff. *Id.* 56.

16 However, nothing in these statements would militate in favor of finding an  
17 “inability to engage in any substantial gainful activity . . . which can be expected to  
18 result in death or which has lasted or can be expected to last for a continuous period  
19 of not less than twelve months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). Dr.  
20 Rubin did not at any point state that Plaintiff would indefinitely suffer from

1 absenteeism. *See* AR 51–59. Dr. Rubin’s testimony that Plaintiff would not cope  
2 well with immediately beginning full time work, but would instead likely need to  
3 begin at the part time level, fails to specify a likely timeframe for this transition. *See*  
4 *id.* Thus, the ALJ’s decision is not in conflict with Dr. Rubin’s testimony and the  
5 Court will not substitute an alternative interpretation of this testimony. *See Molina*,  
6 674 F.3d at 1111 (“Even when the evidence is susceptible to more than one rational  
7 interpretation, we must uphold the ALJ’s findings if they are supported by  
8 inferences reasonably drawn from the record.”). Overall, the Court does not find  
9 error with the ALJ’s weighing of Dr. Rubin’s opinions.

10 **2. The ALJ did not err in discounting Dr. Islam-Zwart’s and Dr.**  
11 **Arnold’s opinions**

12 The ALJ gave little weight to the opinions of Dr. Islam-Zwart, who examined  
13 Plaintiff in February 2016 and December 2016, and Dr. Arnold, who examined  
14 Plaintiff in March 2014 and March 2017. AR 29. Plaintiff argues the ALJ failed to  
15 give specific and legitimate reasons for discounting these medical opinions. ECF  
16 No. 13 at 15. The Commissioner argues the ALJ did not err in rejecting these  
17 opinions. ECF No. 14 at 9–12.

18 The ALJ provided multiple grounds for discounting each of these opinions.  
19 Regarding Dr. Islam-Zwart’s February 2016 opinion, the ALJ found Dr. Islam-  
20 Zwart provided no explanation or objective findings in support of her conclusion



1 that Plaintiff was unable to work, that her mental status examination was largely  
2 within normal limits, that the only “marked” limitation Dr. Islam-Zwart noted was  
3 unsupported outside of Plaintiff’s self-reports, and that this examination occurred  
4 prior to the alleged onset date. AR 29. Regarding Dr. Islam-Zwart’s December 2016  
5 opinion, the ALJ noted Dr. Islam-Zwart’s own stated uncertainty regarding the  
6 degree to which Plaintiff’s “current concerns are a function of his alcohol use,” that  
7 Dr. Islam-Zwart again provided no explanation or objective findings in support of  
8 her conclusion that Plaintiff was unable to work, that her own opinion was internally  
9 inconsistent, that the opinions were inconsistent with treatment records, and that the  
10 opinions were inconsistent with other opinions in the record. *Id.*

11       Regarding Dr. Arnold’s opinions, the ALJ noted both opinions were largely  
12 check-box forms with no explanation, that the marked mental limitations were  
13 inconsistent with his own mental status findings and his own report that “vocational  
14 training or services would minimize or eliminate barriers to employment” and were  
15 also inconsistent with treatment records and Plaintiff’s reports of improvement with  
16 therapy and medication. *Id.* The ALJ further noted that Plaintiff misrepresented his  
17 alcohol use to Dr. Arnold, and so Dr. Arnold did not have a complete picture  
18 regarding Plaintiff’s mental health. *Id.* Finally, the ALJ noted Dr. Arnold’s opinions  
19 were inconsistent with other mental health opinions. *Id.*

20       In discounting each of these opinions, the ALJ provided multiple specific and

1 legitimate reasons. *See Lingenfelter v. Astrue*, 504 F.3d 1028, 1042 (9th Cir. 2007)  
2 (“factors relevant to evaluating any medical opinion include the amount of relevant  
3 evidence that supports the opinion, the quality of the explanation provided in the  
4 opinion, and the consistency of the medical opinion with the record as a whole”);  
5 *Houghton*, 493 F. App’x at 845 (holding ALJ’s finding that physicians’ opinions  
6 were “internally inconsistent” constituted specific and legitimate basis for  
7 discounting them); *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012) (“ALJs  
8 are permitted to reject ‘check-off reports that [do] not contain any explanation of  
9 the bases of their conclusions.’” (quoting *Crane v. Shalala*, 76 F.3d 251, 253 (9th  
10 Cir. 1996) (alteration in original)); *Carmickle v. Comm’r, S.S.A.*, 533 F.3d 1155,  
11 1165 (9th Cir. 2008) (“Medical opinions that predate the alleged onset of disability  
12 are of limited relevance.”). Further, these grounds are supported by the record. *See*  
13 AR 431–38, 451, 464, 472–76, 477–85, 486–92, 594.

14 As to discounting Dr. Islam-Zwart’s opinion on the grounds that it was based  
15 on Plaintiff’s self-reports, an ALJ may discount an opinion if it is “based ‘to a large  
16 extent’ on an applicant’s self-reports and not on clinical evidence, and the ALJ finds  
17 the applicant not credible.” *Ghanim v. Colvin*, 763 F.3d 1154, 1162 (9th Cir. 2014)  
18 (quoting *Tommasetti*, 533 F.3d at 1041 (9th Cir. 2008)). However, “the rule  
19 allowing an ALJ to reject opinions based on self-reports does not apply in the same  
20 manner to opinions regarding mental illness.” *Buck v. Berryhill*, 869 F.3d 1040,

1 1049 (9th Cir. 2017). Psychiatric evaluations “will always depend in part on the  
2 patient’s self-report” because “unlike a broken arm, a mind cannot be x-rayed.” *Id.*  
3 at 1049 (internal quotation marks omitted) (quoting *Poulin v. Bowen*, 817 F.2d 865,  
4 873 (D.C. Cir. 1987)). In this case, however, the ALJ first made extensive findings  
5 and articulated specific, clear and convincing reasons for finding Plaintiff’s  
6 testimony was not credible. AR 25–28. As such, the ALJ provided specific and  
7 legitimate reasons supported by substantial evidence for discounting the opinions  
8 of Dr. Islam-Zwart and Dr. Arnold. Overall, the ALJ did not reversibly err.

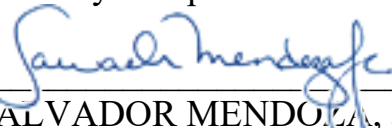
9 **CONCLUSION**

10 For the reasons set forth above, **IT IS HEREBY ORDERED:**

- 11 1. Plaintiff’s Motion for Summary Judgment, **ECF No. 13**, is **DENIED**.  
12 2. The Commissioner’s Motion for Summary Judgment, **ECF No. 14**, is  
13 **GRANTED**.  
14 3. The Clerk’s Office shall **ENTER JUDGMENT** in favor of  
15 **DEFENDANT** and thereafter **CLOSE** the file.

16 **IT IS SO ORDERED.** The Clerk’s Office is directed to enter this Order and  
17 provide copies to all counsel.

18 **DATED** this 21st day of April 2020.

19   
20 SALVADOR MENDOCILLA, JR.  
United States District Judge