

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

Mar 31, 2021

SEAN F. MCAVOY, CLERK

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

RYAN N.,¹

Plaintiff,

vs.

ANDREW M. SAUL,
COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

No. 2:20-cv-00177-MKD

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

ECF Nos. 17, 20

Before the Court are the parties' cross-motions for summary judgment. ECF Nos. 17, 20. The parties consented to proceed before a magistrate judge. ECF No. 6. The Court, having reviewed the administrative record and the parties' briefing,

¹ To protect the privacy of plaintiffs in social security cases, the undersigned identifies them by only their first names and the initial of their last names. See LCivR 5.2(c).

1 is fully informed. For the reasons discussed below, the Court denies Plaintiff's
2 motion, ECF No. 17, and grants Defendant's motion, ECF No. 20.

3 **JURISDICTION**

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

5 **STANDARD OF REVIEW**

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

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

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

8 **FIVE-STEP EVALUATION PROCESS**

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

19 The Commissioner has established a five-step sequential analysis to
20 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §

1 416.920(a)(4)(i)-(v). At step one, the Commissioner considers the claimant's work
2 activity. 20 C.F.R. § 416.920(a)(4)(i). If the claimant is engaged in "substantial
3 gainful activity," the Commissioner must find that the claimant is not disabled. 20
4 C.F.R. § 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. § 416.920(a)(4)(ii). If the claimant suffers from
8 "any impairment or combination of impairments which significantly limits [his or
9 her] physical or mental ability to do basic work activities," the analysis proceeds to
10 step three. 20 C.F.R. § 416.920(c). If the claimant's impairment does not satisfy
11 this severity threshold, however, the Commissioner must find that the claimant is
12 not disabled. *Id.*

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

19 If the severity of the claimant's impairment does not meet or exceed the
20 severity of the enumerated impairments, the Commissioner must pause to assess

1 the claimant’s “residual functional capacity.” Residual functional capacity (RFC),
2 defined generally as the claimant’s ability to perform physical and mental work
3 activities on a sustained basis despite his or her limitations, 20 C.F.R. §
4 416.945(a)(1), is relevant to both the fourth and fifth steps of the analysis.

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

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

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

7 **ALJ’S FINDINGS**

8 On December 28, 2016, Plaintiff applied for Title XVI supplemental
9 security income benefits alleging a disability onset date of January 3, 2013.² Tr.
10 15, 76, 165-70. The application was denied initially, and on reconsideration. Tr.
11 94-102, 106-08. Plaintiff appeared before an administrative law judge (ALJ) on
12 November 5, 2018. Tr. 34-62. On February 22, 2019, the ALJ denied Plaintiff’s
13 claim. Tr. 12-33.

14 At step one of the sequential evaluation process, the ALJ found Plaintiff has
15 not engaged in substantial gainful activity since December 28, 2016. Tr. 17. At
16 step two, the ALJ found that Plaintiff has the following severe impairments:
17 obstructive sleep apnea, obesity, bipolar disorder, and personality disorder. *Id.*

18
19 ² At the hearing, Plaintiff amended his alleged onset date to October 19, 2016, Tr.
20 60, however the ALJ’s decision does not reflect the amended date.

1 At step three, the ALJ found Plaintiff does not have an impairment or
2 combination of impairments that meets or medically equals the severity of a listed
3 impairment. Tr. 18. The ALJ then concluded that Plaintiff has the RFC to perform
4 medium work with the following limitations:

5 [Plaintiff] can frequently climb ladders, ropes, and scaffolds, kneel,
6 and crawl. He has no other postural limitations. He must avoid
7 concentrated exposure to pulmonary irritants (such as fumes, odors,
8 dust, and gases), and workplace hazards (such as moving machinery
9 and unprotected heights). He is limited to work that requires him to
10 perform simple repetitive tasks, have [casual], superficial contact with
11 [the] general public but not as part of the job tasks. He is likely to be
12 off-task but less than 10% of a workday.

13 Tr. 21.

14 At step four, the ALJ found Plaintiff has no past relevant work. Tr. 27. At
15 step five, the ALJ found that, considering Plaintiff's age, education, work
16 experience, RFC, and testimony from the vocational expert, there were jobs that
17 existed in significant numbers in the national economy that Plaintiff could perform,
18 such as automobile detailer, kitchen helper, and laboratory equipment cleaner. Tr.
19 28. Therefore, the ALJ concluded Plaintiff was not under a disability, as defined in
20 the Social Security Act, from the date of the application through the date of the
21 decision. *Id.*

22 On March 23, 2020, the Appeals Council denied review of the ALJ's
23 decision, Tr. 1-6, making the ALJ's decision the Commissioner's final decision for
24 purposes of judicial review. *See* 42 U.S.C. § 1383(c)(3).

1 **ISSUES**

2 Plaintiff seeks judicial review of the Commissioner’s final decision denying
3 him supplemental security income benefits under Title XVI of the Social Security
4 Act. Plaintiff raises the following issues for review:

- 5 1. Whether the ALJ conducted a proper step-three analysis;
6 2. Whether the ALJ properly evaluated Plaintiff’s symptom claims; and
7 3. Whether the ALJ properly evaluated the medical opinion evidence.

8 ECF No. 17 at 2.

9 **DISCUSSION**

10 **A. Step-Three Analysis**

11 Plaintiff contends the ALJ erred by failing to find Plaintiff met or equaled
12 Listing 3.02C. ECF No. 17 at 3-4, ECF No. 21 at 2-5. At step three, the ALJ must
13 determine if a claimant’s impairments meet or equal a listed impairment. 20
14 C.F.R. § 416.920(a)(4)(iii). The Listing of Impairments “describes each of the
15 major body systems impairments [which are considered] severe enough to prevent
16 an individual from doing any gainful activity, regardless of his or her age,
17 education or work experience.” 20 C.F.R. § 416.925. “Listed impairments are
18 purposefully set at a high level of severity because ‘the listings were designed to
19 operate as a presumption of disability that makes further inquiry unnecessary.’ ”
20 *Kennedy v. Colvin*, 758 F.3d 1172, 1176 (9th Cir. 2013) (citing *Sullivan v. Zebley*,

1 493 U.S. 521, 532 (1990)). “Listed impairments set such strict standards because
2 they automatically end the five-step inquiry, before residual functional capacity is
3 even considered.” *Kennedy*, 758 F.3d at 1176. If a claimant meets the listed
4 criteria for disability, she will be found to be disabled. 20 C.F.R. §
5 416.920(a)(4)(iii).

6 “To *meet* a listed impairment, a claimant must establish that he or she meets
7 each characteristic of a listed impairment relevant to his or her claim.” *Tackett*,
8 180 F.3d at 1099 (emphasis in original); 20 C.F.R. § 416.925(d). “To *equal* a
9 listed impairment, a claimant must establish symptoms, signs and laboratory
10 findings ‘at least equal in severity and duration’ to the characteristics of a relevant
11 listed impairment” *Tackett*, 180 F.3d at 1099 (emphasis in original) (quoting
12 20 C.F.R. § 404.1526(a)); 20 C.F.R. § 416.926(a). “If a claimant suffers from
13 multiple impairments and none of them individually meets or equals a listed
14 impairment, the collective symptoms, signs and laboratory findings of all of the
15 claimant’s impairments will be evaluated to determine whether they meet or equal
16 the characteristics of any relevant listed impairment.” *Tackett*, 180 F.3d at 1099.
17 However, “[m]edical equivalence must be based on medical findings,” and “[a]
18 generalized assertion of functional problems is not enough to establish disability at
19 step three.” *Id.* at 1100 (quoting 20 C.F.R. § 404.1526(a)); 20 C.F.R. § 416.926(a).

1 The claimant bears the burden of establishing his impairment (or
2 combination of impairments) meets or equals the criteria of a listed impairments.
3 *Burch v. Barnhart*, 400 F.3d 676, 683 (9th Cir. 2005). “An adjudicator’s
4 articulation of the reason(s) why the individual is or is not disabled at a later step in
5 the sequential evaluation process will provide rationale that is sufficient for a
6 subsequent reviewer or court to determine the basis for the finding about medical
7 equivalence at step 3.” Social Security Ruling (SSR) 17-2P, 2017 WL 3928306, at
8 *4 (effective March 27, 2017).

9 Here, the ALJ found Plaintiff’s impairments did not meet or equal a listing,
10 including Listing 3.02. Tr. 18-21. Listing 3.02C(3) is met if the claimant has a
11 chronic respiratory disorder, besides cystic fibrosis, that causes chronic impairment
12 of gas exchange demonstrated by SpO2 measured by pulse oximetry either at rest,
13 during a 6MWT, or after a 6MWT, less than or equal to 87 percent when the test
14 site altitude is less than 3000 feet. 20 C.F.R. Pt. 404, Subpt. P., App. 1, Listing
15 3.02C(3). Listing 3.00H(2) sets forth the requirements for the pulse oximetry; the
16 test must be performed when the claimant is medically stable, the claimant must
17 not be on supplemental oxygen, the pulse oximetry measurement must be stable,
18 the report must include the required data including a graphical chart, and if there is
19 more than one measurement, the lowest SpO2 measurement is used. 20 C.F.R. Pt.
20 404, Subpt. P., App. 1, Listing 3.00H(2).

1 The ALJ found Plaintiff did not meet Listing 3.02 because his pulmonary
2 function test, DLCO and/or ABG test results did not meet the Listing requirements
3 for Listing 3.02A, 3.02B, or 3.02C, and he did not meet the
4 exacerbation/complication requirements for 3.02D. Tr. 18. The ALJ did not
5 address whether Plaintiff's SpO2 test results met Listing 3.02C(3). Plaintiff
6 contends he meets the requirements of Listing 3.02C(3) because his SpO2 results
7 were 82 percent in February 2017, during a test taken at an elevation less than
8 3000 feet, and his SpO2 in April 2017 was 86 percent. ECF No. 17 at 4 (citing Tr.
9 430, 434). Defendant argues Plaintiff failed to meet his burden in demonstrating
10 he meets Listing 3.02C(3), as the medical records do not contain a graphical
11 printout of Plaintiff's SpO2 value, nor a concurrent, acceptable pulse wave. ECF
12 No. 20 at 5. Defendant also argues Plaintiff has not demonstrated he meets Listing
13 3.02C(3), because the Listing requires the pulse oximetry measurement must be
14 stable, and Plaintiff's values varied too drastically. *Id.* at 5-6. In reply, Plaintiff
15 argues there is sufficient evidence to satisfy the requirements for the Listing, but
16 does not point to a graphical printout, as required by the Listing. ECF No. 21 at 2.
17 Plaintiff further argues Defendant failed to address whether Plaintiff equals Listing
18 3.02C(3), ECF No. 21 at 2, however, Plaintiff failed to present any argument or
19 evidence that he equals the listing.
20

1 Listing 3.02C(3) can only be met if each component of the listing is met,
2 including the requirement that the pulse oximetry report contain a graphical
3 printout, however the record does not contain this required evidence. *See* 20
4 C.F.R. Pt. 404, Subpt. P., App. 1, Listing 3.00H(2)(e)(ii). As such, Plaintiff has
5 not met his burden in demonstrating he meets the listing. Further, while Plaintiff
6 argues he equals the listing, he has not presented an argument nor evidence as to
7 how he equals the listing. Plaintiff is not entitled to remand on these grounds.

8 **B. Plaintiff's Symptom Claims**

9 Plaintiff faults the ALJ for failing to rely on reasons that were clear and
10 convincing in discrediting his symptom claims. ECF No. 17 at 4-17. An ALJ
11 engages in a two-step analysis to determine whether to discount a claimant's
12 testimony regarding subjective symptoms. SSR 16-3p, 2016 WL 1119029, at *2.
13 "First, the ALJ must determine whether there is objective medical evidence of an
14 underlying impairment which could reasonably be expected to produce the pain or
15 other symptoms alleged." *Molina*, 674 F.3d at 1112 (quotation marks omitted).
16 "The claimant is not required to show that [the claimant's] impairment could
17 reasonably be expected to cause the severity of the symptom [the claimant] has

1 alleged; [the claimant] need only show that it could reasonably have caused some
2 degree of the symptom.” *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009).

3 Second, “[i]f the claimant meets the first test and there is no evidence of
4 malingering, the ALJ can only reject the claimant’s testimony about the severity of
5 the symptoms if [the ALJ] gives ‘specific, clear and convincing reasons’ for the
6 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (citations
7 omitted). General findings are insufficient; rather, the ALJ must identify what
8 symptom claims are being discounted and what evidence undermines these claims.
9 *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995); *Thomas v.*
10 *Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (requiring the ALJ to sufficiently
11 explain why it discounted claimant’s symptom claims)). “The clear and
12 convincing [evidence] standard is the most demanding required in Social Security
13 cases.” *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v.*
14 *Comm’r of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).

15 Factors to be considered in evaluating the intensity, persistence, and limiting
16 effects of a claimant’s symptoms include: 1) daily activities; 2) the location,
17 duration, frequency, and intensity of pain or other symptoms; 3) factors that
18 precipitate and aggravate the symptoms; 4) the type, dosage, effectiveness, and
19 side effects of any medication an individual takes or has taken to alleviate pain or
20 other symptoms; 5) treatment, other than medication, an individual receives or has

1 received for relief of pain or other symptoms; 6) any measures other than treatment
2 an individual uses or has used to relieve pain or other symptoms; and 7) any other
3 factors concerning an individual's functional limitations and restrictions due to
4 pain or other symptoms. SSR 16-3p, 2016 WL 1119029, at *7; 20 C.F.R. §
5 416.929(c). The ALJ is instructed to "consider all of the evidence in an
6 individual's record," to "determine how symptoms limit ability to perform work-
7 related activities." SSR 16-3p, 2016 WL 1119029, at *2.

8 The ALJ found that Plaintiff's medically determinable impairments could
9 reasonably be expected to cause some of the alleged symptoms, but that Plaintiff's
10 statements concerning the intensity, persistence, and limiting effects of his
11 symptoms were not entirely consistent with the evidence. Tr. 21.

12 *1. Inconsistent Objective Medical Evidence*

13 The ALJ found Plaintiff's symptom claims are inconsistent with the
14 objective medical evidence. Tr. 21-23. An ALJ may not discredit a claimant's
15 symptom testimony and deny benefits solely because the degree of the symptoms
16 alleged is not supported by objective medical evidence. *Rollins v. Massanari*, 261
17 F.3d 853, 857 (9th Cir. 2001); *Bunnell v. Sullivan*, 947 F.2d 341, 346-47 (9th Cir.
18 1991); *Fair v. Bowen*, 885 F.2d 597, 601 (9th Cir. 1989); *Burch*, 400 F.3d at 680.
19 However, the objective medical evidence is a relevant factor, along with the
20 medical source's information about the claimant's pain or other symptoms, in

1 determining the severity of a claimant's symptoms and their disabling effects.

2 *Rollins*, 261 F.3d at 857; 20 C.F.R. § 416.929(c)(2).

3 Regarding Plaintiff's physical conditions, the ALJ found Plaintiff's
4 allegations of disabling physical limitations are inconsistent with the objective
5 evidence. Tr. 22. The ALJ noted the records do not demonstrate significant
6 complications due to Plaintiff's obstructive sleep apnea nor obesity. *Id.* The
7 medical records reflect Plaintiff's apnea symptoms and nocturnal symptoms
8 resolved with optimal CPAP settings, his chest imaging was normal, Plaintiff was
9 often alert and awake at appointments, and a provider noted Plaintiff was doing
10 well on his current treatment, and another noted Plaintiff's excessive daytime
11 sleepiness resolved with his use of a CPAP. *Id.* (citing Tr. 429, 434, 436, 449,
12 587-88). Plaintiff reported to his providers that he was sleeping well, and having
13 improvement in his symptoms with a CPAP. Tr. 22 (citing Tr. 422, 585). Plaintiff
14 generally had normal respiratory and cardiac function on examination. Tr. 22
15 (citing, e.g., Tr. 421, 424, 428-29). Plaintiff also generally had normal
16 musculoskeletal function, including normal range of motion, gait, strength,
17 sensation, and reflexes. Tr. 22 (citing, e.g., Tr. 432, 436, 442-43).

18 Plaintiff argues the objective evidence is consistent with his symptom
19 claims, as his symptoms are listing-level severity, and the records demonstrate
20 impaired sleep and continued symptoms with treatment. ECF No. 17 at 5-8.

1 However, as discussed *supra*, Plaintiff has not met his burden in demonstrating he
2 meets or equals a listing. While Plaintiff offers an alternative interpretation of the
3 evidence, the ALJ's findings are supported by substantial evidence.

4 Regarding Plaintiff's mental health conditions, the ALJ found the objective
5 evidence is inconsistent with Plaintiff's symptom claims. Tr. 23-24. The ALJ
6 found Plaintiff had improvement in his symptoms with treatment, as he reported
7 improvement, and he was observed as happy, making good progress, and was
8 noted as stable. *Id.* (citing Tr. 202, 206, 208, 421, 462, 480, 497, 562). While he
9 had abnormalities on some examinations, Plaintiff's providers often found he was
10 cooperative, friendly, pleasant, calm, talkative, polite, and appropriate, with normal
11 eye contact, hygiene, and grooming. Tr. 24 (citing, e.g., Tr. 337, 442, 470-74).
12 During periods of reported remission from methamphetamine, and compliance
13 with treatment, Plaintiff generally had normal orientation, thoughts, speech,
14 insight/judgment, memory, and concentration. Tr. 24 (citing, e.g., Tr. 337-38, 432,
15 472-74).

16 Plaintiff argues he had continued symptoms throughout the relevant period,
17 including diminished eye contact, impaired conversations, abnormal thoughts, and
18 other abnormalities on examination. ECF No. 17 at 13-14. Plaintiff offers an
19 alternative interpretation of the evidence, however the ALJ's finding is supported
20 by substantial evidence.

1 While Plaintiff's symptoms naturally waxed and waned, the ALJ's finding
2 that the objective findings were out of proportion with and did not corroborate
3 Plaintiff's report of severe physical and mental limitations is reasonable. This was
4 a clear and convincing reason, along with the other reasons offered, to discount
5 Plaintiff's symptom reports.

6 *2. Improvement with Treatment*

7 The ALJ found Plaintiff's improvement with treatment was inconsistent with
8 his symptom claims. Tr. 22-24. The effectiveness of treatment is a relevant factor
9 in determining the severity of a claimant's symptoms. 20 C.F.R. § 416.929(c)(3)
10 (2011); *Warre v. Comm'r of Soc. Sec. Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006)
11 (determining that conditions effectively controlled with medication are not
12 disabling for purposes of determining eligibility for benefits); *Tommasetti v.*
13 *Astrue*, 533 F.3d 1035, 1040 (9th Cir. 2008) (recognizing that a favorable response
14 to treatment can undermine a claimant's complaints of debilitating pain or other
15 severe limitations).

16 As discussed *supra*, the ALJ found Plaintiff had improvement in both his
17 physical and mental health symptoms with treatment. Tr. 22-24. Plaintiff's
18 obstructive sleep apnea improved with CPAP use, and Plaintiff reported sleeping
19 better and feeling rested. Tr. 22. The medical records demonstrate his providers
20 observed improvement in Plaintiff's mental health symptoms with treatment, and

1 Plaintiff reported improvement with medication. Tr. 23-24. Plaintiff argues he did
2 not have sustained improvement with treatment, and argues the ALJ failed to
3 identify any periods when he was non-compliant with treatment nor when he had
4 improvement with sobriety. ECF No. 17 at 9-10. However, Plaintiff does not
5 point to any periods when he had disabling symptoms despite being compliant with
6 treatment and being free from substances. Plaintiff notes the ALJ's finding that
7 Plaintiff never had a period of sobriety, and does not dispute this finding. *Id.* at 9,
8 Tr. 23.

9 On this record, the ALJ reasonably concluded that Plaintiff's impairments
10 when treated were not as limiting as Plaintiff claimed. This finding is supported by
11 substantial evidence and was a clear and convincing reason to discount Plaintiff's
12 symptoms complaints.

13 3. *Activities of Daily Living*

14 The ALJ found Plaintiff's activities of daily were inconsistent with his
15 symptom claims. Tr. 19, 23. The ALJ may consider a claimant's activities that
16 undermine reported symptoms. *Rollins*, 261 F.3d at 857. If a claimant can spend a
17 substantial part of the day engaged in pursuits involving the performance of
18 exertional or non-exertional functions, the ALJ may find these activities
19 inconsistent with the reported disabling symptoms. *Fair*, 885 F.2d at 603; *Molina*,
20 674 F.3d at 1113. "While a claimant need not vegetate in a dark room in order to

1 be eligible for benefits, the ALJ may discount a claimant’s symptom claims when
2 the claimant reports participation in everyday activities indicating capacities that
3 are transferable to a work setting” or when activities “contradict claims of a totally
4 debilitating impairment.” *Molina*, 674 F.3d at 1112-13.

5 While Plaintiff alleges that he avoids people, does not have any friends, and
6 does not do much with his family, Plaintiff reported going to AA meetings and
7 appointments, watching movies with family members, going to stores, looking for
8 work, doing chores with his mother, going to parks and trails, visiting restaurants,
9 going places alone, and has reported engaging in social activities two times per
10 week, and walking his dog multiple times per day. Tr. 19 (citing, e.g., Tr. 197-
11 201, 222-23, 225-27, 333-34, 580). He also reported playing basketball, video
12 games, and board games with his family members, swimming, fishing, doing
13 yardwork, and watching television. Tr. 20 (citing, e.g., Tr. 554, 575, 577, 579).
14 Plaintiff reported that going for walks and playing basketball helped him control
15 his symptoms, and he expressed interest in pursuing his GED. Tr. 23 (citing Tr.
16 546).

17 Plaintiff argues the ALJ failed to specify that Plaintiff’s activities of daily
18 living are inconsistent with Plaintiff’s symptom claims, and that the activities are
19 not inconsistent with his claims. ECF No. 17 at 12. However, the ALJ pointed to
20 multiple activities discussed *supra* that are inconsistent with Plaintiff’s claims of

1 disabling limitations. On this record, the ALJ reasonably concluded that Plaintiff's
2 activities of daily living are inconsistent with Plaintiff's symptom claims. This
3 finding is supported by substantial evidence and was a clear and convincing reason
4 to discount Plaintiff's symptoms complaints.

5 4. *Work History*

6 The ALJ found Plaintiff's work history was inconsistent with his claims. Tr.
7 24. An ALJ may consider that a claimant stopped working for reasons unrelated to
8 the allegedly disabling condition when weighing the claimant's symptom reports.
9 *Bruton v. Massanari*, 268 F.3d 824, 828 (9th Cir. 2001). The ALJ noted Plaintiff
10 was terminated from his last job due to insubordination rather than his disability.
11 Tr. 24, 496. The ALJ also noted Plaintiff reported a history of 26 arrests and a
12 period of incarceration, which the ALJ found would limit Plaintiff's ability to
13 obtain employment. Tr. 24-25, 334. Plaintiff argues he stopped working due to
14 issues with his coworkers caused by his paranoia, and argues he obtained work
15 despite his history of arrests, indicating his criminal record was not the cause of his
16 inability to work. ECF No. 17 at 14-15. Any error in the ALJ's analysis would be
17 harmless as the ALJ gave other supported reasons to reject Plaintiff's symptom
18 claims. *See Molina*, 674 F.3d at 1115. Plaintiff is not entitled to remand on these
19 grounds.

1 **C. Medical Opinion Evidence**

2 Plaintiff contends the ALJ erred in considering the opinion of Thomas
3 Genthe, Ph.D., and Natalie Christopherson, B.S. ECF No. 17 at 17-21.

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

15 If a treating or examining physician’s opinion is uncontradicted, the ALJ
16 may reject it only by offering “clear and convincing reasons that are supported by
17 substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).
18 “However, the ALJ need not accept the opinion of any physician, including a
19 treating physician, if that opinion is brief, conclusory and inadequately supported
20 by clinical findings.” *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228

1 (9th Cir. 2009) (internal quotation marks and brackets omitted). “If a treating or
2 examining doctor’s opinion is contradicted by another doctor’s opinion, an ALJ
3 may only reject it by providing specific and legitimate reasons that are supported
4 by substantial evidence.” *Bayliss*, 427 F.3d at 1216 (citing *Lester*, 81 F.3d at 830-
5 31). The opinion of a nonexamining physician may serve as substantial evidence if
6 it is supported by other independent evidence in the record. *Andrews v. Shalala*,
7 53 F.3d 1035, 1041 (9th Cir. 1995).

8 “Only physicians and certain other qualified specialists are considered
9 ‘[a]cceptable medical sources.’” *Ghanim*, 763 F.3d at 1161 (alteration in original);
10 *see* 20 C.F.R. § 416.913 (2013).³ However, an ALJ is required to consider
11 evidence from non-acceptable medical sources, such as therapists. 20 C.F.R. §
12 416.913(d) (2013).⁴ An ALJ may reject the opinion of a non-acceptable medical
13 source by giving reasons germane to the opinion. *Ghanim*, 763 F.3d at 1161.

14
15 ³ The regulation that defines acceptable medical sources is found at 20 C.F.R. §
16 416.902 for claims filed after March 27, 2017. The Court applies the regulation in
17 effect at the time the claim was filed.

18 ⁴ The regulation that requires an ALJ’s consider opinions from non-acceptable
19 medical sources is found at 20 C.F.R. § 416.920c for claims filed after March 27,
20 2017. The Court applies the regulation in effect at the time the claim was filed.

1 *1. Dr. Genthe*

2 On October 19, 2016, Dr. Genthe performed a psychological examination.

3 Tr. 332-39. Dr. Genthe diagnosed Plaintiff with schizoaffective disorder,
4 depressive type; intermittent explosive disorder; other specified personality
5 disorder (with borderline and schizotypal features); mild cannabis use disorder;
6 alcohol use disorder in early remission; and stimulant (methamphetamines) use
7 disorder in early remission. Tr. 335. Dr. Genthe opined that Plaintiff has moderate
8 limitations in his ability to understand, remember, and persist in tasks by following
9 very short and simple instructions, perform activities within a schedule, maintain
10 regular attendance and be punctual within customary tolerances without special
11 supervision, learn new tasks, perform routine tasks without special supervision,
12 make simple work-related decisions, be aware of normal hazards and take
13 appropriate precautions, and set realistic goals and plan independently; marked
14 limitations in his ability to understand, remember, and persist in tasks by following
15 detailed instructions, adapt to changes in a routine work setting, and ask simple
16 questions or request assistance; and severe limitations in his ability to
17 communicate and perform effectively in a work setting, maintain appropriate
18 behavior in a work setting, and complete a normal workday/workweek without
19 interruptions from psychologically based symptoms. Tr. 335. Dr. Genthe opined
20 Plaintiff overall has a severe rating. *Id.* Dr. Genthe further opined Plaintiff's

1 impairments are not primarily the result of substance use in the prior 60 days, the
2 limitations were expected to last 12 months, and a protective payee is
3 recommended for management of any funds. Tr. 336. The ALJ gave Dr. Genthe's
4 opinion minimal weight. Tr. 26. As Dr. Genthe's opinion is contradicted by the
5 opinions of Dr. Moore and Dr. Regets, Tr. 71-73, 88-90, the ALJ was required to
6 give specific and legitimate reasons, supported by substantial evidence, to reject
7 Dr. Genthe's opinion. *See Bayliss*, 427 F.3d at 1216.

8 First, the ALJ gave more weight to the State agency opinions than he gave to
9 Dr. Genthe's opinion. Tr. 26. Generally, an ALJ should accord more weight to the
10 opinion of an examining physician than to that of a non-examining physician. *See*
11 *Andrews*, 53 F.3d at 1040-41. However, the opinion of a nonexamining physician
12 may serve as substantial evidence if it is "supported by other evidence in the record
13 and [is] consistent with it." *Id.* at 1041. The ALJ gave significant weight to the
14 portion of the State agency consultant's opinions that Plaintiff can perform simple
15 repetitive tasks, can maintain concentration, persistence and pace for full-time
16 work with occasional interference due to symptoms and possible motivation issues,
17 and that he would do best with superficial contact away from the general public
18 and with casual contacts with others. Tr. 25. The ALJ found this portion of the
19 opinions was consistent with the medical record, Plaintiff's improvement with
20 treatment, and his daily activities. Tr. 25-26. The ALJ gave less weight to the

1 State agency opinions that Plaintiff can perform tasks with some cognitive
2 complexity. Tr. 26. At the initial and reconsideration levels, the analyses of the
3 evidence noted Plaintiff had increased symptoms during a period he reported
4 recent drug use, he had improvement with medication, and Dr. Genthe noted he
5 suspected Plaintiff was engaging in impression management, and symptom
6 exaggeration was considered. Tr. 66-67, 83-84, 336. The ALJ cited to numerous
7 medical records that are consistent with the State agency opinions. As such, the
8 ALJ did not error in giving more weight to reviewing opinions over an examining
9 opinion.

10 Second, the ALJ found Dr. Genthe's opinion was not consistent with his
11 own examination, nor other medical records. Tr. 26. A medical opinion may be
12 rejected if it is unsupported by medical findings. *Bray*, 554 F.3d at 1228; *Batson v.*
13 *Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2004); *Thomas*, 278
14 F.3d at 957; *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001); *Matney v.*
15 *Sullivan*, 981 F.2d 1016, 1019 (9th Cir. 1992). Furthermore, a physician's opinion
16 may be rejected if it is unsupported by the physician's treatment notes. *Connett v.*
17 *Barnhart*, 340 F.3d 871, 875 (9th Cir. 2003). The ALJ found Dr. Genthe's opinion
18 was inconsistent with Plaintiff's presentation during Dr. Genthe's examination. Tr.
19 26 (citing Tr. 337). Dr. Genthe noted Plaintiff was well-groomed with good
20 hygiene, he had normal speech and answers, he was cooperative and friendly, with

1 a euthymic mood, he had normal thoughts, he had a fair understanding of his own
2 difficulties, and he was able to recall four out of four items after a delay. Tr. 337.
3 Plaintiff was able to spell “world” correctly forward and backward, though he
4 incorrectly calculated a math calculation, and he had some limitations in his
5 insight/judgment. Tr. 338. While Plaintiff points to some abnormalities in the
6 examination, ECF No. 17 at 19, the generally normal examination is inconsistent
7 with the marked and severe limitations contained in Dr. Genthe’s opinion.

8 The ALJ also found Dr. Genthe’s opinion was inconsistent with Plaintiff’s
9 presentation at other appointments. Tr. 26. The ALJ noted Plaintiff’s mental
10 symptoms are generally well-controlled or stable when he is compliant with
11 treatment, and on numerous occasions, Plaintiff was observed as happy, smiling,
12 laughing, cooperative, pleasant, calm, appropriate, talkative, polite, alert, oriented,
13 and with normal thoughts, speech, memory, concentration, insight, and judgment.
14 Tr. 23-24. Plaintiff had good progress in treatment, and reported improvement in
15 his symptoms. Tr. 23 (citing, e.g., Tr. 540,548, 571, 580). Plaintiff argues the
16 objective evidence contains multiple abnormalities at appointments, which
17 supports Dr. Genthe’s opinion. ECF No. 17 at 13-14, 20. However, Plaintiff cites
18 to many medical records from the time period prior to Plaintiff beginning
19 medication to manage his symptoms. *See, e.g., id.* at 10 (citing Tr. 349, 350, 380,
20 386) (all four records are from appointments in 2016, before Plaintiff began

1 medication). Plaintiff also cites to several records where only one or two
2 abnormalities were noted, but the examination was otherwise normal. *See, e.g.*,
3 ECF No. 17 at 10 (citing Tr. 540) (at the appointment, Plaintiff had impaired eye
4 contact, but otherwise reported improvement, had a generally normal examination,
5 and wanted to pursue his GED). Plaintiff argues that even if he had improvement
6 in his symptoms, the ALJ should have analyzed the records to determine if
7 Plaintiff was disabled during a closed period, but Plaintiff does not point to any 12-
8 month period he should have been found disabled that the ALJ failed to analyze for
9 a potential closed period. ECF No. 17 at 20. Plaintiff's alternative interpretation
10 of the evidence does not undermine the ALJ's interpretation of the evidence, which
11 is supported by substantial evidence. *See Tommasetti*, 533 F.3d at 1038 (“[W]hen
12 the evidence is susceptible to more than one rational interpretation” the court will
13 not reverse the ALJ's decision).

14 The ALJ also noted that Dr. Genthe rendered his opinion prior to the alleged
15 onset date, and the opinion does not reflect Plaintiff's functioning during the
16 relevant period. Tr. 26. Plaintiff argues the opinion is relevant because it was
17 rendered after the original alleged onset date, as Plaintiff amended his onset date to
18 a later date. ECF No. 17 at 20. However, the ALJ did not reject the opinion
19 because it was rendered prior to the amended alleged onset date, but rather found
20

1 the opinion is inconsistent with Plaintiff's functioning during the relevant period,
2 which is supported by substantial evidence for the reasons discussed herein.

3 Third, the ALJ found Dr. Genthe's opinion was inconsistent with Plaintiff's
4 activities of daily living. Tr. 26. An ALJ may discount a medical source opinion
5 to the extent it conflicts with the claimant's daily activities. *Morgan v. Comm'r of*
6 *Soc. Sec. Admin.*, 169 F.3d 595, 601-02 (9th Cir. 1999). Plaintiff reported
7 socializing more, playing basketball, and expressed interest in pursuing his GED.
8 Tr. 23 (citing Tr. 544, 546). He also reported cooking simple meals, walking
9 places, shopping in stores, visiting parks, walking his dog several times per day,
10 swimming, fishing, and handling housework and yard work. Tr. 25 (citing, e.g.,
11 Tr. 196-98, 222, 226-27). While Plaintiff argues the ALJ did not specify how the
12 activities contradicts Dr. Genthe's opinion, ECF No. 17 at 20, the ALJ's citation to
13 numerous activities Plaintiff reported engaging in demonstrates inconsistencies
14 with Dr. Genthe's extreme limitations. This was a specific and legitimate reason,
15 supported by substantial evidence, to reject Dr. Genthe's opinion.

16 2. *Ms. Christopherson*

17 On February 6, 2018, Ms. Christopherson, Plaintiff's mental health case
18 manager, rendered an opinion on Plaintiff's functioning. Tr. 524-27. Ms.
19 Christopherson opined Plaintiff has mild limitations in his ability to carry out very
20 short, simple instructions, ask simple questions or request assistance, and be aware

1 of normal hazards and take appropriate precautions; moderate limitations in his
2 ability to remember locations and work-like procedures, perform activities within a
3 schedule, maintain regular attendance, and be punctual within customary
4 tolerances, interact appropriately with the general public, travel in unfamiliar
5 places or use public transportation, and set realistic goals or make plans
6 independently of others; marked limitations in his ability to understand and
7 remember very short and simple instructions and detailed instructions, carry out
8 detailed instructions, maintain attention and concentration for extended periods,
9 sustain an ordinary routine without special supervision, make simple work-related
10 decisions, complete a normal workday/workweek without interruptions from
11 psychological symptoms and perform at a consistent pace without an unreasonable
12 number/length of rest periods, accept instructions and respond appropriately to
13 criticism from supervisors, get along with coworkers/peers without distracting
14 them or exhibiting behavioral extremes, maintain socially appropriate behaviors
15 and adhere to basic standards of neatness/cleanliness, and respond appropriately to
16 changes in the work setting, and severe limitations in his ability to work in
17 coordination with or proximity to others without being distracted by them. Tr.

18 524-26. Regarding the “B” criteria, Ms. Christopherson opined Plaintiff has
19 moderate limitations in interacting with others, and marked limitations in
20 understanding, remembering, or applying information, concentrating, persisting, or

1 maintaining pace, and adapting or managing oneself. Tr. 526. She opined Plaintiff
2 meets the “C” criteria of the mental listings, he would be off-task more than 30
3 percent of the time, and would miss four or more days per month if he worked full-
4 time. *Id.* The ALJ gave little weight to Ms. Christopherson’s opinion. Tr. 26. As
5 Ms. Christopherson is not an acceptable medical source, the ALJ was required to
6 give germane reasons to reject the opinion. *See Ghanim*, 763 F.3d at 1161.

7 First, the ALJ found Ms. Christopherson’s opinion lacked much explanation
8 for the opined limitations. Tr. 26. Relevant factors to evaluating any medical
9 opinion include the amount of relevant evidence that supports the opinion, the
10 quality of the explanation provided in the opinion, and the consistency of the
11 medical opinion with the record as a whole. *Lingenfelter v. Astrue*, 504 F.3d 1028,
12 1042 (9th Cir. 2007); *Orn v. Astrue*, 495 F.3d 625, 631 (9th Cir. 2007). Therefore,
13 a medical opinion may be rejected by the ALJ if it inadequately supported by
14 medical findings. *Bray*, 554 F.3d at 1228. Ms. Christopherson’s opinion consists
15 of checked boxes, and a one sentence explanation that Plaintiff’s bipolar disorder
16 impacts his daily functioning due to the cyclical depression. Tr. 524-27. Plaintiff
17 does not challenge this reason. This was a germane reason to reject Ms.
18 Christopherson’s opinion.

19 Second, the ALJ found Ms. Christopherson’s opinion was inconsistent with
20 the longitudinal record. Tr. 26-27. An ALJ may discredit physicians’ opinions

1 that are unsupported by the record as a whole. *Batson*, 359 F.3d at 1195. The ALJ
2 noted Plaintiff was happy, smiling, laughing and oriented at a January 2018
3 appointment with Ms. Christopherson, he had improvement with treatment, and his
4 reported activities of daily living that were inconsistent with the opinion. Tr. 27.
5 As discussed *supra*, the longitudinal record demonstrates Plaintiff had
6 improvement with treatment, and the record is inconsistent with an opinion that
7 Plaintiff has multiple marked and severe limitations. This was a germane reason to
8 reject Ms. Christopherson's opinion. Plaintiff is not entitled to remand on these
9 grounds.

10 CONCLUSION

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

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

14 1. Plaintiff's Motion for Summary Judgment, **ECF No. 17**, is **DENIED**.

15 2. Defendant's Motion for Summary Judgment, **ECF No. 20**, is

16 **GRANTED.**

17 3. The Clerk's Office shall enter **JUDGMENT** in favor of Defendant.
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20

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

3 DATED March 31, 2021.

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

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