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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 SAMUEL M.,

8 Plaintiff,

9 v.

10 KILOLO KIJAKAZI, Acting
Commissioner of Social Security,

11 Defendant.
12

NO. 2:21-CV-0219-TOR

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

13
14 BEFORE THE COURT are the parties' cross-motions for summary
15 judgment (ECF Nos. 11, 12). These matters were submitted for consideration
16 without oral argument. The Court has reviewed the administrative record and the
17 parties' completed briefing and is fully informed. For the reasons discussed below,
18 Plaintiff's Motion for Summary Judgment (ECF No. 11) is **DENIED**, and
19 Defendant's Motion for Summary Judgment (EFC No. 12) is **GRANTED**.

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ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
AND GRANTING DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT ~ 1

1 **JURISDICTION**

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

3 **STANDARD OF REVIEW**

4 A district court’s review of a final decision of the Commissioner of Social
5 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is
6 limited: The Commissioner’s decision will be disturbed “only if it is not supported
7 by substantial evidence or is based on legal error.” *Hill v. Astrue*, 698 F.3d 1153,
8 1158–59 (9th Cir. 2012) (citing 42 U.S.C. § 405(g)). “Substantial evidence”
9 means relevant evidence that “a reasonable mind might accept as adequate to
10 support a conclusion.” *Id.* at 1159 (quotation and citation omitted). Stated
11 differently, substantial evidence equates to “more than a mere scintilla[,] but less
12 than a preponderance.” *Id.* (quotation and citation omitted). In determining
13 whether this standard has been satisfied, a reviewing court must consider the entire
14 record as a whole rather than searching for supporting evidence in isolation. *Id.*

15 In reviewing a denial of benefits, a district court may not substitute its
16 judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152,
17 1156 (9th Cir. 2001). If the evidence in the record “is susceptible to more than one
18 rational interpretation, [the court] must uphold the ALJ’s findings if they are
19 supported by inferences reasonably drawn from the record.” *Molina v. Astrue*, 674
20 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court “may not reverse an

1 ALJ’s decision on account of an error that is harmless.” *Id.* An “error is harmless
2 where it is ‘inconsequential to the ultimate nondisability determination.’” *Id.* at
3 1115 (citation omitted). The party appealing the ALJ’s decision generally bears
4 the burden of establishing that it was harmed. *Shinseki v. Sanders*, 556 U.S. 396,
5 409–10 (2009).

6 **FIVE STEP SEQUENTIAL EVALUATION PROCESS**

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

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

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

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

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

18 If the severity of the claimant’s impairment does meet or exceed the severity
19 of the enumerated impairments, the Commissioner must pause to assess the
20 claimant’s “residual functional capacity.” Residual functional capacity (“RFC”),

1 defined generally as the claimant’s ability to perform physical and mental work
2 activities on a sustained basis despite his or her limitations (20 C.F.R. §§
3 404.1545(a)(1), 416.945(a)(1)), is relevant to both the fourth and fifth steps of the
4 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. §§ 404.1520(a)(4)(iv),
8 416.920(a)(4)(iv). If the claimant is capable of performing past relevant work, the
9 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
10 404.1520(f), 416.920(f). If the claimant is incapable of performing such work, the
11 analysis proceeds to step five.

12 At step five, the Commissioner considers whether, in view of the claimant’s
13 RFC, the claimant is capable of performing other work in the national economy.
14 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). In making this determination,
15 the Commissioner must also consider vocational factors such as the claimant’s age,
16 education and work experience. *Id.* If the claimant is capable of adjusting to other
17 work, the Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
18 404.1520(g)(1), 416.920(g)(1). If the claimant is not capable of adjusting to other
19 work, the analysis concludes with a finding that the claimant is disabled and is
20 therefore entitled to 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. §§ 404.1560(c)(2), 416.960(c)(2);
6 *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

7 **ALJ’S FINDINGS**

8 On October 25, 2018, Plaintiff filed an application for Title II disability
9 insurance benefits and Title XVI supplemental security income benefits, alleging
10 an onset date of November 1, 2017. Tr. 15. The application was initially denied
11 and denied again on reconsideration. *Id.* Plaintiff appeared at a telephonic hearing
12 before an administrative law judge (“ALJ”) on November 23, 2020. *Id.* The ALJ
13 denied Plaintiff’s claim on December 28, 2020. Tr. 30.

14 As a threshold matter, the ALJ found Plaintiff would meet the insured status
15 requirements of the Social Security Act through September 30, 2018. Tr. 17. At
16 step one of the sequential evaluation, the ALJ found Plaintiff had not engaged in
17 substantial gainful activity since November 1, 2017, the alleged onset date. *Id.* At
18 step two, the ALJ found Plaintiff had the following severe impairments: asthma;
19 lumbar strain with chronic back pain; narcissistic personality disorder; antisocial
20 personality disorder; depression and posttraumatic stress disorder (PTSD). Tr. 17–

1 18. At step three, the ALJ found Plaintiff did not have an impairment or
2 combination of impairments that meets or medically equals the severity of a listed
3 impairment. Tr. 18-20. The ALJ then found Plaintiff had a residual functional
4 capacity to perform medium work except:

5 [Plaintiff] can lift 40 pounds occasionally and 20 pounds frequently.
6 He can sit for up to six hours in an eight-hour day, and he can
7 stand/walk for up to six hours in an eight-hour day for one hour at a
8 time. He can occasionally climb ladders, ropes or scaffolds. He must
9 avoid concentrated exposure to industrial vibration, moving
10 mechanical parts and fumes, odors, dusts and gases. He can have no
11 exposure to unprotected heights. He can have no contact with the
12 general public and superficial, brief contact with coworkers and
13 supervisors. He can never engage in collaborative or tandem work. He
14 can tolerate only occasional changes in work duties.

15 Tr. 20.

16 At step four, the ALJ found Plaintiff was unable to perform past relevant
17 work. Tr. 28. However, the ALJ found that based on claimant's age, education,
18 work experience, and residual functional capacity, there are jobs that exist in
19 significant numbers in the national economy that the claimant can perform, such as
20 a Bottle Line Attendant (DOT# 920.687-042), light, unskilled (SVP 1), a Racker
(DOT# 524.687-018), light, unskilled (SVP 1), and a Bottle Packer/Caser (DOT#
920.685-026), light, unskilled (SVP 2). Tr. 28-29. The ALJ concluded Plaintiff
was not under a disability, as defined in the Social Security Act, from November 1,
2017, the alleged onset date, through December 28, 2020, the date of the ALJ's

1 decision. Tr. 30.

2 **ISSUE**

3 Plaintiff essentially raises the following issue in this suit:

4 Did the ALJ fail to provide legally sufficient reasons for rejecting the opinions
5 of three examining physicians and the medical expert opinion which support a
6 finding that Plaintiff met Listing 12.08 and /or was unable to perform
7 substantial gainful activity?

8 ECF No. 11 at 1-2.

9 **DISCUSSION**

10 **A. Medical Opinion**

11 Plaintiff argues the ALJ failed to properly consider and weigh the medical
12 opinion evidence showing he met Listing 12.08 Personality and impulse-control
13 disorders at step three of the evaluation process. ECF No. 11 at 4-5.

14 As an initial matter, for claims filed on or after March 27, 2017, new
15 regulations apply that change the framework for how an ALJ must evaluate
16 medical opinion evidence. 20 C.F.R. §§ 404.1520c, 416.920c; *see also Revisions*
17 *to Rules Regarding the Evaluation of Medical Evidence*, 2017 WL 168819, 82 Fed.
18 Reg. 5844-01 (Jan. 18, 2017). The ALJ applied the new regulations because
19 Plaintiff filed his Title II and XVI claims after March 27, 2017. *See* Tr. 15.

20 Under the new regulations, the ALJ will no longer “give any specific

1 evidentiary weight . . . to any medical opinion(s).” *Revisions to Rules*, 2017 WL
2 168819, 82 Fed. Reg. 5844-01, 5867–68. Instead, an ALJ must consider and
3 evaluate the persuasiveness of all medical opinions or prior administrative medical
4 findings from medical sources. 20 C.F.R. §§ 404.1520c(a)–(b), 416.920c(a)–(b).
5 The factors for evaluating the persuasiveness of medical opinions and prior
6 administrative medical findings include supportability, consistency, relationship
7 with the claimant, specialization, and “other factors that tend to support or
8 contradict a medical opinion or prior administrative medical finding” including but
9 not limited to “evidence showing a medical source has familiarity with the other
10 evidence in the claim or an understanding of our disability program’s policies and
11 evidentiary requirements.” 20 C.F.R. §§ 404.1520c(c)(1)–(5), 416.920c(c)(1)–(5).

12 The ALJ is required to explain how the most important factors,
13 supportability and consistency, were considered. 20 C.F.R. §§ 404.1520c(b)(2),
14 416.920c(b)(2). These factors are explained as follows:

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

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

1 20 C.F.R. §§ 404.1520c(c)(1)–(2), 416.920c(c)(1)–(2).

2 The ALJ may, but is not required to, explain how “the other most persuasive
3 factors in paragraphs (c)(3) through (c)(5)” were considered. 20 C.F.R. §§
4 404.1520c(b)(2); 416.920c(b)(2). However, where two or more medical opinions
5 or prior administrative findings “about the same issue are both equally well-
6 supported . . . and consistent with the record . . . but are not exactly the same,” the
7 ALJ is required to explain how “the most persuasive factors” were considered. 20
8 C.F.R. §§ 404.1520c(b)(2) 416.920c(b)(2).

9 The parties dispute whether Ninth Circuit law that predates the new
10 regulations apply. ECF Nos. 11 at 12; 12 at 3-5. The Ninth Circuit currently
11 requires the ALJ to provide “clear and convincing” reasons for rejecting the
12 uncontradicted opinion of either a treating or examining physician. *Lester v.*
13 *Chater*, 81 F.3d 821, 830 (9th Cir. 1995). When a treating or examining
14 physician’s opinion is contradicted, the Ninth Circuit has held the medical opinion
15 can only “be rejected for specific and legitimate reasons that are supported by
16 substantial evidence in the record.” *Id.* at 830–31 (internal citation omitted).

17 At this time, the Ninth Circuit has not addressed whether these standards still
18 apply when analyzing medical opinions under the new regulations. For purposes
19 of the present case, the Court finds that resolution of this issue is unnecessary.

20 //

1 1. *Jay Toews, Ed.D.*

2 Plaintiff challenges the ALJ’s rejection of the independent medical expert
3 Dr. Toews’ opinion that Plaintiff had a marked functional limitation; adapting or
4 managing oneself. The ALJ found that Plaintiff has no limitation adapting or
5 managing oneself. Tr. 19. Plaintiff reported no mental difficulty bathing, dressing,
6 or completing aspects of his personal hygiene, and he reported that he is capable of
7 managing his daily routine without any significant assistance from others. *Id.* In
8 addition, the ALJ found that the treatment notes routinely indicated he had
9 appropriate mood and affect during exams. *Id.* The ALJ noted that Dr. Toews’
10 opinion of the claimant’s marked difficulty with adapting or managing oneself due
11 to attitude and motivation is not consistent with the claimant’s unremarkable
12 mental status findings, or with his reported activities of daily living, including
13 renovating his cabin, chopping wood, shoveling snow and feeding his farm
14 animals. Tr. 28. Plaintiff installed a kitchen and a bathroom, put in electricity and
15 did all the plumbing and septic work. Tr. 478. The ALJ also noted that much of
16 the evidence Dr. Toews recounted to support his opinions predated the Plaintiff’s
17 alleged onset date of disability. *Id.*

18 Social Security defines, “adapting and managing oneself” as the ability to
19 regulate emotions, control behavior, and maintain well-being in a work setting.
20 *See* 20 C.F.R. Pt. 404, Subpt. P, app. 1, 12.00(E). Examples include responding to

1 demands; adapting to changes; managing one’s psychologically based symptoms;
2 distinguishing between acceptable and unacceptable work performance; setting
3 realistic goals; making plans independently of others; maintaining personal
4 hygiene and attire appropriate to a work setting; and being aware of normal
5 hazards and taking appropriate precautions. *Id.*

6 No harmful error has been shown.

7 2. *Georgie Knapp, Psy.D.*

8 In February 2014, Dr. Knapp opined that Plaintiff had severe impairment in
9 his ability to complete a normal workday and workweek without interruptions from
10 psychologically based symptoms, and marked impairment in his ability to ask
11 simple questions and request assistance, communicate and perform effectively in a
12 work setting and maintain appropriate behavior in a work setting. Tr. 372. The
13 ALJ found this opinion unpersuasive. Tr. 23. The opinion was rendered well prior
14 to the period of disability at issue and was not supported by Dr. Knapp’s mostly
15 unremarkable findings. *Id.* Also, the opinion appears to be based upon Plaintiff’s
16 self-reported symptoms without Dr. Knapp reviewing any other mental health
17 records. Tr. 23-24. The ALJ also discounted Plaintiff’s claimed intensity,
18 persistence and limiting effects of his symptoms, which have not been challenged.
19 Tr. 23 (“Some of the physical and mental abilities and social interactions required
20 in order to perform these activities are the same as those necessary for obtaining

1 and maintaining employment. The undersigned finds the claimant's ability to
2 participate in such activities is inconsistent with his allegations of functional
3 limitations.""). Finally, the ALJ found that Dr. Knapp's opinion of extreme
4 limitations was not consistent with current findings. Tr. 24.

5 No harmful error has been shown.

6 *3. Jenna Yun, Ph.D.*

7 In July 2016, Dr. Yun opined that Plaintiff had severe impairment in his
8 ability to complete a normal workday and workweek, communicate and perform
9 effectively in a work setting, maintain appropriate behavior in a work setting, and
10 set realistic goals and plan independently. Tr. 390. She determined that he had
11 marked impairment in his ability to ask simple questions, request assistance and
12 make simple work-related decisions. Tr. 390. The ALJ found this opinion
13 unpersuasive because Dr. Yun's opinion was rendered prior to the relevant period
14 and not consistent with the current mental status findings. Tr. 24.

15 No harmful error has been shown.

16 *4. Catherine MacLennan, Ph.D.*

17 In December 2018, psychological consultative examiner Catherine
18 MacLennan, Ph.D., opined that the Plaintiff had no cognitive or neurocognitive
19 limitations, but his rigid and atypical thinking patterns would result in difficulty
20 with reasoning and planning. She noted no concerns about his ability to sustain

1 concentration, persistence and pace. She determined that the claimant would likely
2 be very stressed by having to work around others, and he would not get along well
3 with others in a work setting. She concluded that the claimant was not adaptable
4 or flexible, as he had become quite rigid in his thinking and his expectations of the
5 world around him. The ALJ found this opinion mostly persuasive and supported
6 by her exam findings. Tr 24 (“the [Plaintiff] demonstrated unremarkable
7 psychomotor activity, normal perception and speech, ability to think in a linear,
8 clear and goal oriented manner, strong verbal skills, above average immediate
9 memory, intact fund of current knowledge, geographic orientation and ability to
10 perform basic calculations, and abstract verbal abilities. Her opinion is also
11 consistent with the claimant's perfect score on the MMSE. Furthermore, her
12 opinion is consistent with other findings of full orientation, normal judgment and
13 insight, and normal memory.”). However, the ALJ found that Plaintiff would have
14 some limitation with concentrating, persisting and maintaining pace. Tr. 24-25.

15 Plaintiff contends Dr. MacLennan found the equivalent of marked
16 limitations, without saying so. However, the limitations identified have been
17 incorporated into the ALJ’s RFC findings. Tr. 20.

18 No harmful error has been shown.

19 **B. Social Limitations**

20 Plaintiff contends that his social limitations as expressed by the above

1 experts support a total prohibition on working with or around others. ECF No. 11
2 at 19. However, the ALJ limited Plaintiff to no contact with the general public;
3 superficial, brief contact with co-workers and supervisors; and no engagement in
4 collaborative or tandem work. Tr. 20. Thus, the ALJ's RFC determination
5 accounted for Plaintiff's limitations yet still found jobs that exist in significant
6 numbers in the national economy that the claimant can perform considering his
7 age, education, and work experience. Tr. 28-29.

8 **CONCLUSION**

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

12 **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 13 1. Plaintiff's Motion for Summary Judgment (ECF No. 11) is **DENIED**.
- 14 2. Defendant's Motion for Summary Judgment (ECF No. 12) is
15 **GRANTED**.

16 The District Court Executive is directed to enter this Order and Judgment
17 accordingly, furnish copies to counsel, and **close** the file.

18 DATED March 24, 2022.



A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE
United States District Judge

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