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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 BRIAN BLAKELY,

8 Plaintiff,

9 v.

10 COMMISSIONER OF SOCIAL SECURITY,

11 Defendant.

No. 4:16-CV-05137-EFS

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

12
13 Before the Court are cross summary judgment motions. ECF
14 Nos. 17 & 18. Plaintiff Brian Blakely appeals a denial of benefits by
15 the Administrative Law Judge (ALJ). ECF No. 17. Mr. Blakely contends
16 that the ALJ (1) erroneously rejected the examining medical opinion of
17 Jameson Lontz, Ph.D.; (2) erroneously rejected the opinion of Jared
18 Holman, A.R.N.P.; and (3) failed to provide specific, clear, and
19 convincing reasons for discrediting Mr. Blakely's symptom testimony.
20 ECF No. 17 at 2. The Commissioner of Social Security (Commissioner)
21 asks the Court to affirm the ALJ's decision that Mr. Blakely is
22 capable of performing substantial gainful activity in a field for
23 which a significant number of jobs exist in the national economy. ECF
24 No. 18.

1 After reviewing the record and relevant authority, the Court is
2 fully informed. For the reasons set forth below, the Court denies
3 Plaintiff's Motion for Summary Judgment and grants Defendant's Motion
4 for Summary Judgment.

5 I. FACTS AND PROCEDURAL HISTORY¹

6 Mr. Blakely was born in 1976. AR 168. He obtained his GED in
7 2006. AR 214. Mr. Blakely has significant employment history up until
8 his alleged disability onset date of August 15, 2012, including
9 working as an industrial truck operator, a laborer for stores, a
10 material handler, a cannery worker, a cleaner housekeeper, a house
11 mover-helper, and a van driver. AR 29-30, 50.

12 In 2000, Mr. Blakely suffered a traumatic brain injury when he
13 fell from a ladder, which resulted in a seizure disorder and cognitive
14 deficits. AR 300, 365. He was on disability until he returned to work
15 in 2008. AR. 366. Mr. Blakely reports that he has difficulty with
16 vertigo, hearing problems in the left ear, and double vision on the
17 right side. AR 221.

18 Mr. Blakely spends his days watching television, fishing, doing
19 chores, visiting others, and using the computer. AR 223-25. He
20 reports that his parents assist him with cooking, shopping, and other
21 chores. AR 222-25. Mr. Blakely also indicates that he frequently
22 needs to have things repeated to him and requires hands on training.
23 AR. 604.

24
25 _____
26 ¹ The facts are only briefly summarized. Detailed facts are contained in
the administrative hearing transcript, the ALJ's decision, the parties'
briefs, and the underlying records.

1 On August 16, 2012, Mr. Blakely protectively applied for
2 disability insurance benefits, AR 168, and filed a claim for
3 supplemental security income, AR 175. His alleged onset date was
4 August 15, 2012. AR 168. Mr. Blakely's claims were denied initially
5 and upon reconsideration. AR 79, 101. Mr. Blakely filed a written
6 request for an administrative hearing, AR 113-14, which was held
7 before ALJ Caroline Siderius on January 29, 2015, AR 40.

8 On June 11, 2015, the ALJ issued a decision denying Mr.
9 Blakely's claims. AR 32. The Appeals Council denied review of the
10 ALJ's decision. AR 1. On October 18, 2016, Mr. Blakely filed this
11 lawsuit appealing the ALJ's decision. ECF Nos. 1 & 3. The parties
12 subsequently filed the instant summary judgment motions. ECF
13 Nos. 17 & 18.

14 **II. DISABILITY DETERMINATION**

15 A "disability" is defined as the "inability to engage in any
16 substantial gainful activity by reason of any medically determinable
17 physical or mental impairment which can be expected to result in
18 death or which has lasted or can be expected to last for a continuous
19 period of not less than twelve months." 42 U.S.C. §§ 423(d)(1)(A),
20 1382c(a)(3)(A). The decision maker uses a five-step sequential
21 evaluation process to determine whether a claimant is disabled. 20
22 C.F.R. §§ 404.1520, 416.920.

23 Step one assesses whether the claimant is engaged in substantial
24 gainful activities during the relevant period. If he is, benefits
25 are denied. 20 C.F.R. §§ 404.1520(b), 416.920(b). If he is not, the
26 decision maker proceeds to step two.

1 Step two assesses whether the claimant has a medically severe
2 impairment or combination of impairments. 20 C.F.R. §§ 404.1520(c),
3 416.920(c). If the claimant does not have a severe impairment or
4 combination of impairments, the disability claim is denied. If the
5 impairment is severe, the evaluation proceeds to the third step.

6 Step three compares the claimant's impairment with a number of
7 listed impairments acknowledged by the Commissioner to be so severe
8 as to preclude substantial gainful activity. 20 C.F.R. §§ 404 Subpt.
9 P App. 1, 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925,
10 416.926. If the impairment meets or equals one of the listed
11 impairments, the claimant is conclusively presumed to be disabled.
12 If the impairment does not meet or equal one of the listed
13 impairments, the evaluation proceeds to the fourth step.

14 Step four assesses whether the impairment prevents the claimant
15 from performing work he has performed in the past. This includes
16 determining the claimant's residual functional capacity (RFC). 20
17 C.F.R. §§ 404.1520(e), 416.920(e). If the claimant is able to
18 perform his previous work, he is not disabled. If the claimant
19 cannot perform this work, the evaluation proceeds to the fifth step.

20 Step five, the final step, assesses whether the claimant can
21 perform other work in the national economy in view of his age,
22 education, and work experience. 20 C.F.R. §§ 404.1520(g), 416.920(g);
23 see *Bowen v. Yuckert*, 482 U.S. 137 (1987).

24 The burden of proof shifts during this sequential disability
25 analysis. The claimant has the initial burden of establishing a
26 prima facie case of entitlement to disability benefits. *Rhinehart v.*

1 *Finch*, 438 F.2d 920, 921 (9th Cir. 1971). The claimant meets this
2 burden if he establishes that a physical or mental impairment
3 prevents him from engaging in his previous occupation. The burden
4 then shifts to the Commissioner to show that (1) the claimant can
5 perform other substantial gainful activity, and (2) a "significant
6 number of jobs exist in the national economy" that the claimant can
7 perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9th Cir. 1984). A
8 claimant is disabled only if his impairments are of such severity
9 that he is not only unable to do his previous work but cannot,
10 considering his age, education, and work experiences, engage in any
11 other substantial gainful work that exists in sufficient quantity in
12 the national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).

13 In this case, the ALJ determined that Mr. Blakely was not
14 disabled. At step one, the ALJ determined that Mr. Blakely had not
15 engaged in substantial gainful activity following his alleged
16 disability onset date. AR 23. At step two, the ALJ found that Mr.
17 Blakely has the following severe impairments: (1) seizure disorder,
18 (2) mild memory loss, and (3) mood instability. AR 23. At step
19 three, the ALJ found that Mr. Blakely's impairments did not meet or
20 medically equal the severity of any listed impairments. AR 24. At
21 step four, the ALJ found:

22 After careful consideration of the entire record, the
23 undersigned finds that the claimant has the residual
24 functional capacity to perform medium work as defined in 20
25 CFR 404.1567(c) and 416.967(c) subject to the following
26 limitations. The claimant can lift or carry 40 pounds
occasionally and 20 pounds frequently. The claimant can
perform work that does not require him to walk on uneven
surfaces, climb ladders, ropes, or scaffolds, or work at
unprotected heights. The claimant does not have any

1 limitations walking, sitting or standing. The claimant can
2 perform work [that] does not require the operation of the
3 machinery or equipment or the operation of foot pedals. He
4 can perform work that does not require driving. He can
5 perform simple repetitive tasks. He can tolerate
6 occasional, brief, and non-collaborative contact with the
7 public and coworkers. The claimant would need to have
8 frequent brief breaks every 60 to 90 minutes for up to five
9 minutes.

6 AR 25. This finding was based in part on the ALJ's determination
7 that Mr. Blakely's statements "concerning the intensity, persistence
8 and limiting effects of these symptoms are not entirely credible."

9 AR 26. The ALJ determined that Mr. Blakely could perform past
10 relevant work as a cleaner housekeeper. AR 29. Accordingly, the ALJ
11 concluded at step four that Mr. Blakely is not disabled.

12 Although the ALJ determined that Mr. Blakeley is not disabled at
13 step four, she went on to make an "alternative" finding at step five
14 that "considering the claimant's age, education, work experience, and
15 residual functional capacity, there are other jobs that exist in
16 significant numbers in the national economy that claimant also can
17 perform." AR 30. Based on the vocational expert's testimony, the ALJ
18 found that Mr. Blakely would be able to work as a cafeteria
19 attendant.

20 **III. STANDARD OF REVIEW**

21 On review, the Court considers the record as a whole, not just
22 the evidence supporting the ALJ's decision. *Weetman v. Sullivan*, 877
23 F.2d 20, 22 (9th Cir. 1989) (quoting *Kornock v. Harris*, 648 F.2d 525,
24 526 (9th Cir. 1980)). The Court upholds the ALJ's determination that
25 the claimant is not disabled if the ALJ applied the proper legal
26 standards and there is substantial evidence in the record as a whole

1 to support the decision. *Delgado v. Heckler*, 722 F.2d 570, 572 (9th
2 Cir. 1983) (citing 42 U.S.C. § 405(g)); *Brawner v. Sec'y of Health &*
3 *Human Servs.*, 839 F.2d 432, 433 (9th Cir. 1987). Substantial evidence
4 is more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d 1112,
5 1119 n.10 (9th Cir. 1975), but less than a preponderance, *McAllister*
6 *v. Sullivan*, 888 F.2d 599, 601-02 (9th Cir. 1989); *Desrosiers v. Sec'y*
7 *of Health & Human Servs.*, 846 F.2d 573, 576 (9th Cir. 1988). "It
8 means such relevant evidence as a reasonable mind might accept as
9 adequate to support a conclusion." *Richardson v. Perales*, 402 U.S.
10 389, 401 (1971) (citations omitted). The Court will also uphold "such
11 inferences and conclusions as the [ALJ] may reasonably draw from the
12 evidence." *Mark v. Celebrezze*, 348 F.2d 289, 293 (9th Cir. 1965). If
13 the evidence supports more than one rational interpretation, a
14 reviewing court must uphold the ALJ's decision. *Allen v. Heckler*, 749
15 F.2d 577, 579 (9th Cir. 1984).

16 IV. ANALYSIS

17 The Court addresses each of Mr. Blakely's challenges to the
18 ALJ's decision in turn.

19 A. **Medical Opinion of Jameson Lontz, Ph.D.**

20 Mr. Blakely claims that the ALJ erroneously rejected the
21 examining medical opinion of Jameson Lontz. ECF No. 17 at 6. Mr.
22 Blakely also contends that the ALJ "further erred in failing to
23 develop the record as recommended by Dr. Lontz." ECF No. 17 at 9.

24 "In disability benefits cases . . . physicians may render
25 medical, clinical opinions, or they may render opinions on the
26 ultimate issue of disability - the claimant's ability to perform

1 work." *Garrison v. Colvin*, 759 F.3d 995, 1012 (9th Cir. 2014)
2 (alteration in original). There are three types of physicians:
3 treating physicians, examining physicians, and non-examining
4 physicians. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995). The
5 ALJ must provide "clear and convincing" reasons for rejecting an
6 examining physician's opinions and may not reject such opinions
7 without providing "specific and legitimate reasons" supported by
8 "substantial evidence" in the record. *Id.* "An ALJ can satisfy the
9 substantial evidence requirement by setting out a detailed and
10 thorough summary of the facts and conflicting clinical evidence,
11 stating his interpretation thereof, and making findings." *Garrison*,
12 759 F.3d at 1012 (internal quotation marks omitted).

13 On February 26, 2015, Dr. Jameson C. Lontz, Ph.D., conducted a
14 neuropsychological evaluation. AR 365-371. In the resulting report,
15 Dr. Lontz diagnosed Mr. Blakely with "[m]ild neurocognitive disorder,
16 due to traumatic brain injury, without behavioral disturbance, mild."
17 AR 370. Dr. Lontz's major findings were as follows:

18 Results indicated generally reduced intellectual
19 performances with relatively high perceptual reasoning
20 abilities alongside generally low average memory abilities.
21 Academic performances were within the low average range.
22 Significant attention and concentration confound was
23 indicated. Significant deficits within the sensorimotor
24 and language domains were found. However, executive
25 functions appeared to be within normal limits.
26 AR 365.

23 Under the portion of the report entitled "Recommendations" Dr.
24 Lontz included a list of 12 suggestions, including the following:

- 25 2) Cognitive behavioral therapy to address mood instability
26 that results from ongoing residuals due to what is
purported to be moderate traumatic brain injury.

1 3) Psychiatric consult to determine ongoing candidacy for
2 mood stabilizing medication that can address the
symptoms outlined in this report.

3 a. As part of that consult, the examinee may also
4 want to consider a stimulant medication that
allows for better attention and concentration.

5
6 9) Should the examinee elect a return to work in a capacity
(which would be relatively reduced compared to his
former functioning), frequent breaks of short duration
are recommended (e.g., 15 minute breaks every 60-90
minutes during the workday).

7
8 11) Occupational and speech therapies are recommended so
as to assess functional limitations, and to develop and
implement compensatory strategies (e.g., daily planner,
9 schedule) that will assist the examinee toward improved
self-management skills.

10 AR 370.

11 The ALJ stated that Dr. Lontz's opinion "supports limiting the
12 claimant to simple routine work and reducing stress by limiting social
13 interaction," and the ALJ afforded that opinion significant weight.

14 AR 29. The ALJ also found, however, that the "duration of breaks
15 opined by Dr. Lontz is not supported by the medical evidence of
16 record. Although the claimant may need breaks, the evidence regarding
17 the frequency of seizures and cognitive functioning supports no more
18 than brief breaks. As such, this portion of Dr. Lontz's opinion is
19 given lesser weight." AR 29.

20 1. Length of Recommended Work Break

21 Mr. Blakely argues that the ALJ "rejected only that portion of
22 the opinion that would indicate an inability to engage in competitive
23 employment - namely, Dr. Lontz's specific determination that Mr.
24 Blakely would require 15 minute breaks every 60-90 minutes during the
25 workday." ECF No. 17 at 6. According to Mr. Blakely, "the ALJ's
26

1 interpretation mischaracterizes the nature of his impairments and is
2 unsupported by the medical record." ECF No. 19 at 3.

3 First, it is worth noting the language in Dr. Lontz's report
4 does not indicate a clear need for Mr. Blakely to take 15-minute
5 breaks in order to be able to work. Instead, the 15-minute duration
6 is provided as an example of what might constitute the recommended
7 "frequent breaks of short duration." AR 370. An ALJ "may rationally
8 rely on specific imperatives regarding a claimant's limitations,
9 rather than recommendations." *Rounds v. Comm'r Soc. Sec. Admin.*, 807
10 F.3d 996, 1006 (9th Cir. 2015). Thus, the ALJ was not required to
11 treat this parenthetical illustration as an opinion regarding Mr.
12 Blakely's employment limitations.

13 Second, to the extent the example of a 15-minute break could be
14 considered to constitute Dr. Lontz's "opinion," that opinion appears
15 to be inconsistent with the opinion of another acceptable medical
16 source. During the May 14, 2015 hearing, Dr. Ronald Devere, a
17 neurologist, pointed out that the neuropsychology evaluation needs to
18 be viewed in the context of Mr. Blakely's activities of daily living
19 and the history of comments made by Mr. Blakely's treating physicians.
20 AR 47. Upon consideration of everything before him, Dr. Devere opined
21 that Mr. Blakely suffered from only mild cognitive impairment. AR 42-
22 47.

23 Consistent with Dr. Devere's opinion and testimony, the ALJ
24 noted that the treating records throughout 2014 "show few, if any,
25 complaints of impairment related to his mental impairments. The
26 claimant's treatment history shows little mention of mood difficulties

1 and minimal, if any treatment for these. However, the undersigned has
2 considered these impairments given their intersection with his mild
3 cognitive difficulties." AR 28 (internal record citations omitted).
4 Thus, the ALJ pointed to specific and legitimate reasons – which were
5 supported by substantial evidence on the record – for her conclusion
6 that frequent 5-minute breaks adequately reflected Mr. Blakely's
7 residual functional capacity.

8 Lastly, assuming arguendo that the ALJ erred in determining that
9 5-minute breaks would be sufficient, Mr. Blakely has not shown any
10 resulting harm. At the hearing, when the hypothetical given to the
11 vocational expert was changed to reflect a break duration of 15
12 minutes, the vocational expert still opined that – although it was a
13 close call – a cafeteria attendant employer would retain the employee.
14 Thus, even if Mr. Blakely required frequent 15-minute breaks, the
15 expert testimony in the record supports finding that Mr. Blakely can
16 perform a significant number of jobs that exist in the national
17 economy.

18 2. Further Development of the Record

19 Mr. Blakely argues that Dr. Lontz "recommended evaluations to
20 determine the limitations from Mr. Blakely's mood disorders, and
21 evaluations from an occupational and speech therapist to assess
22 functional limitations based on those impairments." ECF No. 17 at 9.
23 Contrary to Mr. Blakely's contentions, however, Dr. Lontz did not
24 recommend developing the record any further, nor did his
25 recommendations suggest that further record development was necessary.
26 Looking at Dr. Lontz's recommendations, it is clear that each of the

1 suggested additional consultations were intended to provide Mr.
2 Blakely with a treatment plan; they did not necessarily call for
3 further diagnosis or clarification.

4 **B. Opinion of Jared Holman, A.R.N.P.**

5 In her decision, the ALJ stated,

6 On April 29, 2013, Jared Homan, A.R.N.P., opined the
7 claimant could perform light work. He opined the
8 claimant's epilepsy and hemiplegia would cause mild
9 limitations in functioning. Additionally, he noted the
10 claimant's conductive hearing loss would cause moderate
11 limitations in the claimant's ability to hear. Mr.
12 Holman's opinion suggests the claimant retains the ability
13 to perform some work. The medical evidence does not
14 support significant limitations based on hearing loss and
15 does not support the degree of exertional limitation opined
16 by Mr. Holman. As such, his opinion is given lesser
17 weight.

18 AR 28.

19 Mr. Blakely claims that the ALJ "erroneously rejected the
20 treating medical opinion of Jared Holman, A.R.N.P." ECF No. 17 at 10.
21 Mr. Blakely argues that although Mr. Holman is not an "acceptable
22 medical source," the ALJ was nevertheless required to provide legally
23 sufficient reasons to reject his opinion. ECF No. 17 at 11.

24 As an initial matter, under the Social Security regulations,
25 "only licensed physicians and certain other qualified specialists are
26 considered acceptable medical sources." *Molina v. Astrue*, 674 F.3d
1104, 1111 (9th Cir. 2012) (internal quotes omitted). Medical
professionals such as nurse practitioners and physical therapists are
not considered "acceptable medical sources," and their opinions are
not entitled to the same deference as acceptable medical sources. 20
C.F.R. § 404.1513(a), (d); see also *Huff v. Astrue*, 275 F. App'x 713,
716 (9th Cir. 2008) (explaining that the "ALJ was entitled to give the

1 physical therapist's opinion less weight" when the opinion
2 "contradicted the findings of other acceptable medical sources in the
3 record, and the ALJ properly relied on the acceptable medical
4 sources"). Still, the opinions of "other sources," such as an
5 A.R.N.P., may be used to "show the severity of [the claimant's]
6 impairment(s) and how it affects [the claimant's] ability to work," 20
7 C.F.R. § 404.1513(d).

8 1. Hearing Loss

9 Mr. Blakely claims that the ALJ erred because she "wholly
10 disregarded" an audiometer test conducted by A.R.N.P. Holman in April
11 2013. ECF No. 17 at 12. That test indicated that Mr. Blakely has no
12 hearing in his left ear. AR 319.

13 The record shows that Mr. Blakely does have hearing loss in his
14 left ear and consistently reported as much. See, e.g., AR 221, 316,
15 332. That said, even Mr. Blakely's latest January 2015 hearing test
16 shows that his overall hearing is adequate, and does not meet the
17 Social Security standards for hearing loss not treated with a cochlear
18 implant. See AR 589 ("Word recognition ability was great in the right
19 ear at 98% correct. Results show left sided deafness. We discussed
20 amplification options . . . to help him hear better after medical
21 clearance.").² Further the medical evidence on the record, as a

22
23 ² To meet the relevant listing for hearing loss, tests must show either
24 A. An average air conduction hearing threshold of 90 decibels or
25 greater in the better ear and an average bone conduction
26 hearing threshold of 60 decibels or greater in the better ear
(see 2.00B2c).

OR

B. A word recognition score of 40 percent or less in the better
ear determined using a standardized list of phonetically
balanced monosyllabic words (see 2.00B2e).

1 whole, is inconsistent and suggests that Mr. Blakely's hearing loss
2 did not significantly impact his employability. See, e.g., AR 200
3 (indicating Mr. Blakely had no difficulty hearing the interviewer);
4 AR 433 (recording "negative" for hearing loss during September 2013
5 office visit); AR 458, 460 (indicating in the same report both that
6 Mr. Blakely had "extreme" hearing loss and that his hearing in each
7 ear was "grossly intact"). Therefore, the ALJ did not err in finding
8 that "the medical evidence does not support *significant limitations*
9 based on hearing loss." AR 28 (emphasis added).

10 2. Light-Work Limitation

11 Mr. Blakely claims that the ALJ disregarded clinical findings
12 from a March 2014 examination supporting A.R.N.P. Holman's opinion
13 that Mr. Blakely is limited to performing light exertional work. Mr.
14 Blakely therefore argues that the record does not support the ALJ's
15 finding that Mr. Holman's April 2013 opinion conflicts with other
16 medical evidence in the record.

17 As the ALJ noted, A.R.N.P. Holman's opinion in April 2013 was
18 that Mr. Blakely could perform "light work;" that is, "lift 20 pounds
19 maximum and frequently lift or carry up to 10 pounds, able to walk or
20 stand six out of eight hours per day, and able to sit and use pushing
21 or pulling arm or leg movements most of the day." AR 317. However,
22 the ALJ also noted that only two months earlier, another examining
23 provider opined that Mr. Blakely was capable of heavy work – able to
24 lift 100 pounds maximum and frequently lift or carry up to 50 pounds –

25
26 See *Exertional and Nonexertional Limitations*, DI 34001.012, Social Security
Administration Program Operations Manual System,
<http://policy.ssa.gov/poms.nsf/lnx/0434001012>.

1 and predicted that this would remain the case "life long" with
2 available medical treatment. AR 28, 314. Thus it was not improper for
3 the ALJ to conclude that Mr. Holman's opinion was contradicted by
4 other evidence in the record.

5 Here, again, the medical records are inconsistent, but generally
6 indicate that Mr. Blakely has some right-side weakness. See, e.g.,
7 AR 459 ("Negative for dizziness, extremity weakness, gait
8 disturbance"), AR 461 ("Gait is right side weakness . . .
9 [patient] with right side paralysis."), AR 521 (recording "negative"
10 for muscle weakness). The ALJ reasonably interpreted the medical
11 evidence to conclude that Mr. Blakely's right-side weakness is serious
12 enough to prevent him from performing heavy work, but not so severe as
13 to limit Mr. Blakely to only light work. Thus, the record contains
14 substantial evidence to support the ALJ's determination that Mr.
15 Blakely was capable of lifting 40 pounds occasionally and 20 pounds
16 frequently, see AR 25, and it was not error for the ALJ to reject the
17 conflicting portion of Mr. Holman's opinion.

18 **C. Credibility Determination as to Mr. Blakely**

19 Mr. Blakely claims that the ALJ discredited his symptom
20 testimony without providing legally sufficient reasons for doing so.
21 ECF No. 17 at 13. Mr. Blakely argues that "the ALJ wholly disregarded
22 that the objective medical evidence comports with Mr. Blakely's
23 reported symptoms." ECF No. 17 at 15.

24 A two-step analysis is used by the ALJ to assess whether a
25 claimant's testimony regarding subjective pain or symptoms is
26 credible. *Garrison*, 759 F.3d at 1014. Step one requires the ALJ to

1 determine whether the claimant presented objective medical evidence of
2 an impairment, which could reasonably be expected to produce some
3 degree of the pain or other symptoms alleged. *Lingenfelter v. Astrue*,
4 504 F.3d 1028, 1035-36 (9th Cir. 2007); *Smolen v. Chater*, 80 F.3d
5 1273, 1282 (9th Cir. 1996). Objective medical evidence of pain or
6 fatigue, or the severity thereof, need not be provided by the
7 claimant. *Garrison*, 759 F.3d at 1014.

8 If the claimant satisfies the first step of this analysis, and
9 there is no evidence of malingering, the ALJ must accept the
10 claimant's testimony about the severity of his symptoms unless the ALJ
11 provides specific, clear, and convincing reasons for rejecting the
12 claimant's symptom-severity testimony. *Id.* An ALJ need not believe a
13 claimant's every allegation of pain or non-exertional impairment. *Orn*
14 *v. Astrue*, 495 F.3d 625, 635 (9th Cir. 2007). To discredit a
15 claimant's testimony after finding that a medical impairment exists,
16 however, "the ALJ must provide specific, cogent reasons for the
17 disbelief." *Id.* (internal quotation marks omitted). In weighing a
18 claimant's credibility, an ALJ may consider "inconsistencies in
19 testimony or between testimony and conduct, daily activities, and
20 unexplained, or inadequately explained, failure to seek treatment or
21 follow a prescribed course of treatment." *Orn v. Astrue*, 495 F.3d 625,
22 636 (9th Cir. 2007) (internal quotation marks omitted).

23 In this case, the ALJ found Mr. Blakely's medically determinable
24 impairments could reasonably be expected to cause the alleged
25 symptoms, but went on to find that his "statements concerning the
26 intensity, persistence and limiting effects of these symptoms are not

1 entirely credible for the reasons explained in this decision." AR 26.
2 The ALJ noted a treating physician's report from November 2014 that
3 stated that Mr. Blakely demonstrated normal speech, an "unremarkable"
4 gait, normal muscle tone, and "strength is 5/5 in the upper and lower
5 limbs." AR 27, 363. The ALJ pointed out the general lack of
6 complaints and treatment relating to "cognitive or physical impairment
7 related to his seizures," "impairment related to his mental
8 impairments," and "mood difficulties." AR 28. The ALJ also mentioned
9 that "the medical evidence of record does not indicate a significant
10 difficult managing appointments," and that this "is inconsistent with
11 his complaints of problems concentrating and needing reminders." AR
12 28.

13 The ALJ provided specific, clear, and convincing reasons to
14 support her conclusion that "the medical records do not support the
15 frequency and functional limitations endorsed by the claimant." AR 28.
16 The ALJ acted within her discretion in weighing Mr. Blakely's
17 credibility.

18 **V. CONCLUSION**

19 For the reasons outlined above, the Court holds that the ALJ's
20 finding of nondisability is both reasonable and supported by
21 substantial evidence in the record. The Court therefore denies Mr.
22 Blakely's Motion for Summary Judgment and grants the Commissioner's
23 Motion for Summary Judgment.

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

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

