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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 EDWARD RICHARDSON,

No. 4:17-CV-5002-EFS

8 Plaintiff,

9 v.

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

10 COMMISSIONER OF SOCIAL SECURITY,

11 Defendant.
12

13 Before the Court, without oral argument, are cross-summary-
14 judgment motions. ECF Nos. 13 & 14. Plaintiff Edward Richardson
15 appeals the Administrative Law Judge's ("ALJ") denial of benefits. See
16 ECF No. 13. Mr. Richardson contends the ALJ erred by (1) improperly
17 conducting a drug and alcohol abuse analysis, (2) improperly
18 discrediting his subjective symptom testimony, and (3) improperly
19 weighing the medical evidence. See ECF No. 13 at 2-3. The Commissioner
20 of Social Security ("Commissioner") asks the Court to affirm the ALJ's
21 decision. See ECF No. 14.

22 The Court has reviewed the administrative record and the
23 parties' briefing and is fully informed. For the reasons set forth
24 below, the Court reverses the ALJ's decision and remands for
25 additional proceedings.
26

1 I. STATEMENT OF FACTS¹

2 Plaintiff Edward Richardson was born on May 2, 1969, and is 48
3 years old. Administrative Record, ECF No. 10, ("AR") 290. His highest
4 level of formal education is a GED, and he is able to communicate in
5 English. AR 521. He stands 5'8" tall and weighs approximately 180
6 pounds. AR 459, 642.

7 Mr. Richardson has been diagnosed with a number of physical and
8 mental conditions, including lumbar disc disorder, severe asthma,
9 generalized anxiety Disorder, bipolar I disorder, and depression. See
10 AR 465, 506-12. He experiences chronic back pain, which he has
11 historically managed with prescription opioid drugs. See AR 572, 588,
12 652. Mr. Richardson also takes a number of other prescription drugs to
13 manage his symptoms. See AR 734-42. At times, his anxiety causes him
14 to become aggressive and verbally abusive to those around him. See AR
15 76-77.

16 Mr. Richardson lives with his mother and spends his days mostly
17 at home. AR 72-76, 89. He has a significant work history as a
18 construction worker (heavy work, semi-skilled, DOT Code: 869.664-014)
19 and carpenter (medium work, skilled, DOT Code: 860.381-022). AR 36.
20 Mr. Richardson has not been employed since early 2008. AR 225-29.

21 II. PROCEDURAL HISTORY AND ALJ FINDINGS

22 On July 15, 2012, Mr. Richardson filed an application for
23 disability insurance benefits and a related application for
24 supplemental security income. AR 18. In both claims, he alleged a

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

1 disability onset date of February 14, 2008. AR 18. Mr. Richardson's
2 claims were denied initially and upon reconsideration. AR 18.

3 Mr. Richardson subsequently requested a hearing before an ALJ,
4 which took place before ALJ Moira Ausems on December 1, 2014. AR 18.
5 The ALJ presided over the hearing from Spokane, Washington, while Mr.
6 Richardson and counsel appeared by video from Kennewick, Washington.
7 AR 18. Vocational expert Daniel R. McKinney, Sr., and medical expert
8 Anthony E. Francis, M.D., appeared telephonically. AR 18, 58-86.

9 On May 5, 2015, the ALJ issued a decision denying Mr.
10 Richardson's claim. AR 18-38. In her decision, she determined Mr.
11 Richardson has the severe impairments of lumbar degenerative disc and
12 joint disease; mild thoracic degenerative and joint disease; mildly
13 displaced left patella fracture; asthma; depressive disorder, not
14 otherwise specified; generalized anxiety disorder; prescription
15 narcotics dependence; polysubstance abuse involving methamphetamine
16 and marijuana; and possible seizure disorder or substance abuse
17 withdrawal seizures. AR 21.

18 The ALJ proceeded to find that Mr. Richardson's impairments met
19 listings 12.04 - Affective Disorders, 12.06 - Anxiety-Related
20 Disorders, and 12.09 - Substance Addiction Disorders but that his
21 impairments would not meet the listings if he stopped abusing illicit
22 substances. AR 22-25. Further, the ALJ found that absent his substance
23 abuse, Mr. Richardson would have the residual functional capacity
24 (RFC) to perform light work as defined in 20 CFR §§ 404.1567(b) and
25 416.967(b) with some postural and environmental limitations. AR 25-36.
26 Based on this assessment, the ALJ found that absent substance abuse,

1 Mr. Richardson would not be able to perform his past relevant work but
2 that there were a significant number of jobs in the national economy
3 that the claimant could perform, including Production Assembler (light
4 work, DOT Code: 706.687-010), Table Worker (sedentary work, DOT Code:
5 739.687-182), and Inspector Packer (light work, 784.687-042). AR 36-
6 37. As a result, the ALJ concluded Mr. Richardson is not disabled
7 under sections 216(i) and 223(d) of the Social Security Act. AR 38.

8 The Appeals Council denied Mr. Richardson's request for review,
9 AR 1-2, making the ALJ's decision the final agency action for purposes
10 of judicial review. 42 U.S.C. § 1383(c)(3); 20 C.F.R. §§ 416.1481,
11 422.210. Mr. Richardson filed this suit on January 17, 2017, ECF
12 No. 1, appealing the ALJ's decision. The parties then filed the
13 present summary-judgment motions. ECF Nos. 13 & 14.

14 **III. STANDARD OF REVIEW**

15 A district court's review of a Commissioner's final decision is
16 governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is
17 limited: the Commissioner's decision will be disturbed "only if it is
18 not supported by substantial evidence or is based on legal error."
19 *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). "Substantial
20 evidence" means relevant evidence that "a reasonable mind might accept
21 as adequate to support a conclusion." *Id.* at 1159 (quotation and
22 citation omitted). Stated differently, substantial evidence equates to
23 "more than a mere scintilla but less than a preponderance." *Id.*
24 (quotation and citation omitted). In determining whether this standard
25 has been satisfied, a reviewing court must consider the entire record

1 as a whole rather than searching for supporting evidence in isolation.
2 *Id.*

3 In reviewing a denial of benefits, a district court may not
4 substitute its judgment for that of the Commissioner. If the evidence
5 in the record "is susceptible to more than one rational
6 interpretation, [the court] must uphold the ALJ's findings if they are
7 supported by inferences reasonably drawn from the record." *Molina v.*
8 *Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court
9 "may not reverse an ALJ's decision on account of an error that is
10 harmless." *Id.* An error is harmless "where it is inconsequential to
11 the [ALJ's] ultimate nondisability determination." *Id.* at 1115
12 (quotation and citation omitted). The party appealing the ALJ's
13 decision generally bears the burden of establishing that it was
14 harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

15 **IV. DISABILITY DETERMINATION**

16 A claimant is considered "disabled" for the purposes of the
17 Social Security Act if two conditions are satisfied. First, the
18 claimant must be "unable to engage in any substantial gainful
19 activity by reason of any medically determinable physical or mental
20 impairment which can be expected to result in death or which has
21 lasted or can be expected to last for a continuous period of not less
22 than twelve months." 42 U.S.C. § 1382c(a)(3)(A). Second, the
23 claimant's impairment must be of such severity that he "is not only
24 unable to do his previous work but cannot, considering his age,
25 education, and work experience, engage in any other kind of
26 substantial gainful work which exists in the national economy." *Id.*

1 § 1382c(a)(3)(B). The decision-maker uses a five-step sequential
2 evaluation process to determine whether a claimant is disabled. 20
3 C.F.R. §§ 404.1520, 416.920.

4 Step one assesses whether the claimant is currently engaged in a
5 substantial gainful activity. *Id.* § 416.920(a)(4)(i). If he is,
6 benefits are denied. 20 C.F.R. §§ 404.1520(b), 416.920(b). If he is
7 not, the decision-maker proceeds to step two.

8 Step two assesses whether the claimant has a medically severe
9 impairment, or combination of impairments, which significantly limits
10 the claimant's physical or mental ability to do basic work
11 activities. 20 C.F.R. §§ 404.1520(c), 416.920(c). If he does not, the
12 disability claim is denied. If he does, the evaluation proceeds to
13 step three.

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

21 Step four assesses whether the impairment prevents the claimant
22 from performing work he has performed in the past by determining the
23 claimant's residual functional capacity ("RFC"). *Id.* §§ 404.1520(e),
24 416.920(e). If the claimant is able to perform his previous work, the
25 claimant is not disabled. If the claimant cannot perform this work,
26 the evaluation proceeds to step five.

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

6 The burden of proof shifts during this analysis. The claimant
7 has the initial burden of establishing entitlement to disability
8 benefits under steps one through four. *Rhinehart v. Finch*, 438 F.2d
9 920, 921 (9th Cir. 1971). At step five, the burden shifts to the
10 Commissioner to show (1) that the claimant can perform other
11 substantial gainful activity and (2) that a "significant number of
12 jobs exist in the national economy" which the claimant can perform.
13 *Kail v. Heckler*, 722 F.2d 1496, 1498 (9th Cir. 1984).

14 V. ANALYSIS

15 Mr. Richardson contends the ALJ erred because she: (1)
16 improperly conducted a drug abuse analysis; (2) improperly discredited
17 Mr. Richardson's subjective testimony of his symptoms; and (3)
18 improperly weighed the medical evidence. See ECF No. 13 at 2-3. The
19 Court evaluates each challenge to the ALJ's decision in turn.

20 A. Drug abuse analysis

21 Mr. Richardson first argues that the ALJ erred by improperly
22 concluding that he had a substance abuse disorder and that the
23 disorder materially contributed to his disabling limitations. See ECF
24 13 at 3-11. The Commissioner responds that Mr. Richardson had the
25 burden of proving his drug and alcohol abuse did not materially
26 contribute to his disabling limitations and that the ALJ's conclusion

1 was supported by substantial evidence in the record. See ECF No. 14 at
2 3-7.

3 Federal law provides that a claimant cannot receive disability
4 benefits if "alcoholism or drug addiction would . . . be a
5 contributing factor material to the Commissioner's determination that
6 the individual is disabled." 42 U.S.C. § 423(d)(2)(C). As the Court of
7 Appeals for the Ninth Circuit has explained, Congress adopted this
8 amendment as part of the Contract with America Advancement Act to
9 "discourage alcohol and drug abuse, or at least not to encourage it
10 with a permanent government subsidy." *Ball v. Massanari*, 254 F.3d 817,
11 824 (9th Cir. 2001).

12 In 2013, the Social Security Administration issued a formal
13 ruling, SSR 13-2p, which reinforced and clarified the agency's pre-
14 existing policies regarding Drug Addiction and Alcoholism ("DAA")²
15 that existed before the ruling was issued. See *Garner v. Colvin*, 626
16 Fed. Appx. 699, 701 (9th Cir. 2015). SSR 13-2p requires an ALJ to have
17 "objective medical evidence - that is, signs, symptoms, and laboratory
18 findings - from an acceptable medical source" to make a finding that a
19 claimant is abusing drugs or alcohol. SSR 13-2p(8)(b)(i). The
20 regulation explains that a number of things do not constitute
21 objective medical evidence, including (1) a third-party report
22 referencing another physician's findings - the ALJ must "have the

23 ² Although imprecise, the Court uses the term "DAA" because it is commonly
24 used by the Social Security Administration. See SSS 13-2p(1)(a)(i) (defining
25 DAA as "Substance Use Disorders; that is, Substance Dependence or Substance
26 Abuse as defined in the latest edition of the Diagnostic and Statistical
Manual of Mental Disorders (DSM) published by the American Psychiatric
Association").

1 source's own clinical or laboratory findings," *id.* at (8)(b)(ii); (2)
2 self-reported drug use, *id.* at (8)(b)(i); and (3) a single positive
3 drug test, *id.* at (8)(d)(ii).

4 If objective medical evidence does not exist in the record, SSR
5 13-2p requires the ALJ to make "every reasonable effort to develop a
6 complete medical history." SSR 13-2p(8)(a)(iii). If objective medical
7 evidence does exist in the record, the regulation provides that the
8 ALJ must also identify evidence establishing a "maladaptive pattern of
9 substance use and the other requirements for diagnosis of a Substance
10 Abuse Disorder in the DSM." SSR 13-2p(8)(b)(ii). "This evidence must
11 come from an acceptable medical source." *Id.* Only after properly
12 determining that the record supports a finding of DAA may the ALJ
13 decide whether that abuse is material to the claimant's disabling
14 limitations.

15 (1) Substantial evidence

16 In this case, the ALJ found that Mr. Richardson abused illicit
17 drugs, including methamphetamine and prescription opiates. See AR 21-
18 23. Mr. Richardson argues this conclusion is not supported by
19 objective medical evidence in the record. See ECF No. 13 at 3.

20 The ALJ supported her conclusion of DAA with lengthy references
21 to the record. First, she referenced the opinion of Dr. Wei-Hsung Lin,
22 Mr. Richardson's treating physician from approximately March 2012 to
23 March 2013. See AR 22, 409-36, 546-47. After Mr. Richardson tested
24 positive for methamphetamine in a drug screen urine test in February
25 2013, Dr. Lin sent Mr. Richardson a letter explaining he would no
26 longer be able to prescribe him prescription opiates because

1 methamphetamine use is a breach of the pain contract he had signed. AR
2 547. He described the methamphetamine use as Mr. Richardson's
3 "overriding health issue," and said that Mr. Richardson should no
4 longer be prescribed anxiety medications because his "anxiety is
5 primarily caused by the meth use." AR 547. In a phone call regarding
6 the letter, Dr. Lin explained that "while [Mr. Richardson] may indeed
7 have anxiety, I can't determine how truly severe it is until he has
8 submitted himself through detox treatment for the methamphetamine use.
9 He was not forthright about his drug use, therefore there is no basis
10 to decide how severe his anxiety is." AR 546.

11 Second, the ALJ referenced that a month after Dr. Lin sent him
12 this letter, Mr. Richardson changed primary care providers from to a
13 Dr. Quentin Johnson. AR 22. In an appointment to establish care on
14 March 29, 2013, Mr. Richardson asked for a refill of his pain
15 medication, stating that his former health care provider had retired.
16 AR 508. Dr. Johnson prescribed him more hydrocodone but informed Mr.
17 Richardson that he did not treat chronic pain, had Mr. Richardson sign
18 a pain contract, and recommended a follow-up appointment with a pain
19 management specialist. AR 511.

20 Third, the ALJ noted a third-party medical evaluation referenced
21 records from several other physicians, either treating or examining,
22 that suggested Mr. Richardson was abusing illicit substances. AR 22.
23 "The claimant self-reported on June 1, 2009 to William Spann, M.D., he
24 had withdrawal symptoms from stopping Xanax. Dr. Spann told him he
25 should turn himself in for treatment." AR 22, 379. In April 2010,
26 James Kopp, M.D. found inconsistencies during his physical

1 examination, including positive Waddell's signs, which can indicate
2 malingering. AR 22, 382. Dr. Kopp also recommended that Mr. Richardson
3 be seen by an addictionologist rather than a pain clinic. AR 22, 382.
4 Dr. Kopp examined Mr. Richardson again in October of 2010; his notes
5 indicate he "strongly suspect[ed] narcotic addiction." AR 382. Richard
6 Schneider, Ph.D., conducted a psychological examination of Mr.
7 Richardson and diagnosed central nervous system side effects of
8 narcotics and analgesics and polysubstance abuse using cocaine,
9 methamphetamine, and marijuana. AR 22.

10 Fourth, the ALJ noted that Mr. Richardson had told an evaluating
11 physician that his admission of illicit and recreational drugs in the
12 past had been "used against him" in his worker's compensation claim.
13 AR 23. The ALJ inferred that Mr. Richardson may have a similar
14 motivation to conceal his methamphetamine and marijuana use from
15 treating medical providers and the Social Security Administration. Mr.
16 Richardson argues that this point is merely conjecture that does not
17 constitute evidence. See ECF No. 13 at 9.

18 Finally, the ALJ suggested that Mr. Richardson's pharmacy
19 records evidence that he abused his hydrocodone prescription. AR 22.
20 She listed several dates on which he renewed his prescriptions before
21 the ALJ believed it would be necessary were he taking them at the
22 appropriate frequency, including refills on December 13, 2012, January
23 3, 2013, March 13, 2013, March 29, 2013, June 6, 2013, and June 7,
24 2013. AR 22. However, the ALJ incorrectly stated that all of Mr.
25 Richardson's prescriptions for the listed dates were for 30 days (and
26 thus suggestive of hydrocodone abuse). AR 22. Rather, the record

1 indicates some of these prescriptions were for as little as two days.
2 AR 736-737. That being the case, the proximity of two 30-day
3 prescriptions filled on March 13, 2013, and March 29, 2013, is the
4 only evidence of suggestive of prescription abuse in Mr. Richardson's
5 pharmacy records. Further, other records indicate Mr. Richardson's
6 pharmaceutical habits were not considered abnormal by Washington State
7 prescription monitoring programs. *See, e.g.*, AR 764.

8 Although the third-party report contained significant reference
9 to records showing Mr. Richardson's drug abuse, the Social Security
10 Administration's own rules provide that a third-party report cannot
11 constitute objective medical evidence for the purposes of a drug and
12 alcohol analysis. SSR 13-2p(8)(b)(ii). To appropriately make a finding
13 that Mr. Richardson was abusing illicit substances, SSR 13-2p requires
14 that the record contain clinical or laboratory findings indicating
15 such abuse. *Id.* These findings must not only show he was using an
16 illicit substance but also that his use supported a diagnosis of a
17 Substance Abuse Disorder per the DSM. *Id.*

18 The ALJ's opinion is well-reasoned, thoughtful, and
19 comprehensive. However, under the Court's reading of SSR 13-2p, it
20 must remand for further development of the record. Although the record
21 certainly suggests that Mr. Richardson has abused or currently abuses
22 illicit substances, none of the aforementioned evidence constitutes
23 the type of objective medical evidence required by SSR 13-2p to
24 support a DAA finding. Nor is the Court aware of any other evidence in
25 the record that would satisfy SSR 13-2p. Accordingly, the Court must
26 remand this case for the ALJ to further develop the record to

1 determine whether Mr. Richardson had DAA during the relevant period.
2 The ALJ should make every reasonable effort to develop a complete
3 medical history. See SSR 13-2p(8)(a)(iii). At that point, if the
4 record still does not contain objective medical evidence supporting a
5 diagnosis of a Substance Abuse Disorder, the ALJ may not make a
6 finding of DAA. See SSR 13-2p(8)(b).

7 (2) Materiality of DAA

8 Once she found that Mr. Richardson abused illicit drugs, the ALJ
9 concluded that those addictions were a contributing factor to his
10 disability. See AR 27-31. Mr. Richardson argues this conclusion is not
11 supported by substantial evidence in the record. Because the Court
12 finds that the ALJ did not have substantial evidence in the record to
13 make a substance abuse finding, the Court declines to address whether
14 the ALJ properly concluded that Mr. Richardson's substance was a
15 material contributing factor to his disability.

16 **B. Claimant's symptom testimony**

17 Mr. Richardson also contends the ALJ reversibly erred by
18 discrediting his testimony regarding his subjective symptoms. ECF
19 No. 13 at 11.

20 If a claimant's impairment could reasonably be expected to
21 produce the symptoms alleged in the testimony and there is no evidence
22 that a claimant is malingering, an ALJ may only reject a claimant's
23 testimony about the severity of her symptoms by offering "specific,
24 clear, and convincing reasons." *Smolen v. Chater*, 80 F.3d 1273, 1281
25 (9th Cir. 1996). "This is not an easy requirement to meet: '[t]he
26 clear and convincing standard is the most demanding required in Social

1 Security cases.'" *Garrison v. Colvin*, 759 F.3d 995, 1014 (9th Cir.
2 2014) (quoting *Moore v. Comm'r of Soc. Sec. Admin.*, 278 F.3d 920, 924
3 (9th Cir. 2002)). Examples of legitimate bases to discredit a
4 claimant's testimony include the claimant's "reputation for
5 truthfulness, inconsistencies in testimony or between testimony and
6 conduct," and other "ordinary techniques of credibility evaluation."
7 *Orn v. Astrue*, 495 F.3d 625, 636 (9th Cir. 2007); *Fair v. Bowen*, 885
8 F.2d 597, 604 n.5 (9th Cir. 1989). Where evidence of malingering
9 exists, however, the ALJ need not provide clear and convincing reasons
10 for dismissing a claimant's testimony. *See Smolen*, 80 F.3d at 1281.

11 Here, the ALJ noted significant evidence of malingering. AR 22,
12 31. Notably, the record indicates Mr. Richardson has shown positive
13 Waddell's signs "suggestive of an attempt to embellish symptomatology
14 in pursuit of secondary financial gain". AR 31. As noted above, when
15 Mr. Richardson tested positive for methamphetamine and was informed he
16 would no longer receive prescription narcotics from Dr. Lin, Mr.
17 Richardson immediately found a new physician and lied, saying the
18 reason he switched physicians was that Dr. Lin had retired. AR 22,
19 511, 547.

20 Even absent the evidence of malingering, the ALJ gave a number
21 of reasons for discrediting Mr. Richardson's testimony, including that
22 (1) it was inconsistent with the objective medical evidence, AR 27,
23 (2) there were inconsistent statements made throughout the record, AR
24 22, 29-31, and (3) the record suggests Mr. Richardson may have reason
25 to be dishonest with the Social Security Administration due to his
26 past experience with a worker's compensation claim. AR 23.

1 The Court finds these reasons to be sufficiently clear,
2 convincing, and specific. When reviewing an ALJ's decision, the Court
3 is not a "trier of fact;" issues of fact are to be decided by the ALJ.
4 *Fair*, 885 F.2d at 604. Indeed, the Court of Appeals for the Ninth
5 Circuit has explained that "credibility determinations are the
6 province of the ALJ." *Id.* Accordingly, the ALJ did not err by
7 discrediting Mr. Richardson's subjective symptom testimony.

8 **C. Medical evidence**

9 Finally, Mr. Richardson contends the ALJ reversibly erred by
10 improperly weighing the medical evidence. ECF No. 13 at 16. The
11 Commissioner responds that the ALJ's interpretations of the medical
12 evidence were reasonable and that Mr. Richardson simply offers an
13 alternate interpretation of the medical evidence, which is
14 insufficient to overturn the ALJ's decision. ECF No. 14 at 20.

15 "In disability benefits cases, physicians may render medical,
16 clinical opinions, or they may render opinions on the ultimate issue
17 of disability – the claimant's ability to perform work." *Garrison*,
18 759 F.3d at 1012 (quotation omitted). There are three types of
19 physicians: treating physicians, examining physicians, and
20 nonexamining physicians. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.
21 1995). "As a general rule, more weight should be given to the opinion
22 of a treating source than to the opinion of doctors who do not treat
23 the claimant." *Id.* The ALJ must provide "clear and convincing"
24 reasons for rejecting the uncontradicted opinion of an examining
25 physician. *Id.*

26 /

1 If the opinion of a treating physician is contradicted by
2 another physician, the ALJ may not reject the opinion without
3 providing "specific and legitimate reasons" supported by "substantial
4 evidence" in the record. *Id.* "In other words, an ALJ errs when he
5 rejects a medical opinion or assigns it little weight while doing
6 nothing more than ignoring it, asserting without explanation that
7 another medical opinion is more persuasive, or criticizing it with
8 boilerplate language that fails to offer a substantive basis for his
9 conclusion." *Garrison*, 759 F.3d at 1012. "An ALJ can satisfy the
10 substantial evidence requirement by setting out a detailed and
11 thorough summary of the facts and conflicting clinical evidence,
12 stating his interpretation thereof, and making findings." *Id.*
13 (internal quotations omitted).

14 **(1) Physical opinions**

15 Mr. Richardson alleges the ALJ improperly gave little weight to
16 the opinions of Anthony Francis, M.D., Thomas Gritzka, M.D., Wei-Hsung
17 Lin, M.D., Michael Gale, P.T., and Javiera Hutria, P.A.

18 a. Dr. Francis

19 The ALJ gave little weight to the opinion of Dr. Francis because
20 he did not have access to over a year of orthopedic chart notes when
21 he testified at the hearing. AR 32. The ALJ concluded that the medical
22 records, which were subsequently submitted, do not support Dr.
23 Francis' speculative opinion that the claimant's lumbar impairment
24 "might" equal a 1.04A listing. AR 32. Mr. Richardson argues Dr.
25 Francis was more conclusive than the ALJ suggests and that the
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1 subsequent medical records do not reveal sufficient improvement to
2 deviate from the expert's conclusion. ECF No. 13 at 16.

3 An ALJ may reject an opinion that is "brief, conclusory, and
4 inadequately supported by clinical findings." *Thomas v. Barnhart*, 278
5 F.3d 947, 957 (9th Cir. 2002). Dr. Francis stated that he was not
6 comfortable coming to a conclusion regarding a 1.04A listing because
7 he was not able to review the missing orthopedic records. Thus, any
8 medical opinion he provided was speculative and inadequately supported
9 by medical findings. Accordingly, the ALJ did not need to provide
10 clear and convincing reasons to reject Dr. Francis' opinion. *Id.*

11 b. Dr. Gritzka

12 The ALJ gave little weight to Dr. Gritzka's opinion that Mr.
13 Richardson would be absent from work greater than three days per
14 month. AR 32. She did so because (1) Mr. Richardson regularly provided
15 misleading information to physicians; (2) Dr. Gritzka is not qualified
16 as a mental health specialist; and (3) the objective findings reported
17 by Dr. Gritzka are out of proportion to other objective findings
18 reported by Mr. Richardson's treating providers, suggesting he was
19 exaggerating his symptoms. AR 32.

20 Mr. Richardson asserts Dr. Gritzka's opinion on absenteeism was
21 based on his physical condition, not his psychological condition. The
22 record does not establish this clearly. See AR 391 ("Although I am not
23 a psychiatrist, the psychiatric behavior that the examinee
24 demonstrated today would make it difficult for him to work on a
25 regular basis on a production line.").

26 /

1 Although Mr. Richardson may not agree with the ALJ's reasoning,
2 the ALJ did not simply ignore Dr. Gritzka's opinion or reject it with
3 boilerplate reasons, as is contemplated in *Garrison*. See 759 F.3d at
4 1012. The ALJ gave a number of specific and legitimate reasons for
5 rejecting Dr. Gritzka's opinion, which is all that the law of this
6 Circuit requires. *Id.*

7 c. Dr. Lin

8 The ALJ gave little weight to the opinions of Dr. Lin in May and
9 November of 2012 insofar as they related to Mr. Richardson's anxiety
10 because Dr. Lin later reflected his anxiety was "primarily caused" by
11 his methamphetamine use. AR 32, 547. She gave some weight to his
12 opinion of January 2013 regarding Mr. Richardson's asthma because (1)
13 he had successfully worked as a carpenter and in construction with
14 this condition and (2) the record did not show any worsening of
15 symptoms. AR 29, 33. Accordingly, she did not incorporate into the RFC
16 any limitation for pulmonary irritants. AR 33. Mr. Richardson argues
17 the ALJ erroneously dismissed Dr. Lin's opinions on anxiety because
18 the record does not support a conclusion of substance abuse. ECF No.
19 13 at 19. He similarly argues the ALJ erroneously dismissed Dr. Lin's
20 opinions on asthma because they are supported by the record. ECF
21 No. 13 at 19.

22 Although Dr. Lin's letter to Mr. Richardson, AR 547, does not
23 qualify as "objective medical evidence" for the purposes of DAA, it is
24 nonetheless important to understanding the context of Dr. Lin's
25 opinion regarding Mr. Richardson's health. Dr. Lin expressly stated in
26 his letter that Mr. Richardson's methamphetamine is his overriding

1 health issue. AR 547. He also wrote that Mr. Richardson's anxiety was
2 "primarily caused" by methamphetamine use. AR 547. Accordingly, the
3 ALJ properly rejected Dr. Lin's opinions regarding Mr. Richardson's
4 anxiety because they were made before he was aware of Mr. Richardson's
5 methamphetamine use - indeed, Dr. Lin himself appeared to reject those
6 opinions in his letter. AR 546-47.

7 Regarding Dr. Lin's opinion as to Mr. Richardson's asthma, the
8 opinion appears to consist of two comments in a medical report, which
9 indicated he experienced "wheezing diffusely with prolonged exp [sic]
10 phase" and "wheezing bilaterally." AR 457-58. There is no indication
11 this opinion relates directly to his sensitivity to pulmonary
12 irritants. Nor did the ALJ reject this opinion entirely; rather, she
13 gave it "some weight." AR 32-33. Accordingly, the Court finds that the
14 ALJ's reasoning that Mr. Richardson's asthma had not interfered with
15 his past work sufficient to award "some weight" to Dr. Lin's opinion.
16 To the extent that her discrediting of Dr. Lin's opinion regarding
17 asthma constitutes error, that error is harmless.

18 *d. Michael Gale, P.T. & Javiera Hutria, P.A.*

19 The ALJ gave little weight to the June 13, 2013 opinion of
20 physical therapist Michael Gale because (1) it was a one-time
21 evaluation for DSHS benefits, (2) the objective medical evidence does
22 not reflect the severity of the reported symptoms, (3) Mr. Gale's
23 opinion considered Mr. Richardson's subjective complaints - which the
24 ALJ properly found not credible - (4) and Mr. Gale considered his
25 diagnoses of bipolar I and generalized anxiety disorder. AR 33. Mr.
26 Richardson argues she did so improperly. See ECF No. 13 at 17-18.

1 Similarly, the ALJ gave little weight to the opinion of Javiera
2 Hutria, P.A. because she did not identify her qualifications in the
3 document containing her opinion and did not set forth sufficient
4 "objective medical findings or rationale" in support of her opinion.
5 AR 32. Mr. Richardson claims that the ALJ "clearly failed to
6 accurately read this evidence, and rejected it for being from an
7 unclear source and for not containing supporting evidence." ECF No. 13
8 at 19.

9 Generally, physical therapists and physician's assistants are
10 considered an "other source" that is entitled to less weight than a
11 physician. *Huff v. Astrue*, 275 F. App'x 713, 716 (9th Cir. 2008). This
12 being the case, the ALJ provided a number of sufficiently specific and
13 legitimate reasons to discount Mr. Gale's opinion. See AR 33. In the
14 same way, the ALJ properly discounted Javiera Hutria's opinion. It is
15 strikingly brief and conclusory. See AR 395-96. See *Thomas*, 278 F.3d
16 at 957. Accordingly, the ALJ did not reversibly err by improperly
17 evaluating the medical evidence in the record.

18 **D. Psychological opinions**

19 The ALJ gave little weight to several psychological opinions in
20 the record. See AR 34-36. Mr. Richardson argues she did so wrongly.
21 ECF No. 13 at 19-22. Because the issue of substance abuse is so
22 closely related to the psychological opinions in the record, the Court
23 declines to address this issue. The ALJ should reevaluate those
24 opinions in light of any new evidence of substance abuse.³

25
26 ³ Although the ALJ will need to reevaluate the psychological opinions based
on further development of the record on remand, the Court notes that - on the

1 **VI. CONCLUSION**

2 In summary, the Court finds the ALJ erred by failing to
3 sufficiently develop the record regarding Mr. Richardson's alleged
4 substance abuse. The Court remands this case for the ALJ to:

5 (1) Further develop the record on Mr. Richardson's alleged
6 substance abuse, basing any finding of DAA on clinical or
7 laboratory findings present in the record.

8 (2) Re-weigh the opinions of treating and evaluating
9 psychologists in light of any new evidence relating to
10 substance abuse.

11 (3) Further develop the record as she deems appropriate.

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

13 1. Plaintiff's Motion for Summary Judgment, **ECF No. 13**, is
14 **GRANTED.**

15 2. The Commissioner's Motion for Summary Judgment, **ECF No. 14**,
16 is **DENIED.**

17 3. This matter is **REMANDED** to the Commissioner for additional
18 proceedings consistent with this Order.

19 4. **JUDGMENT** is to be entered in favor of Plaintiff.

20 5. An application for attorney fees may be filed by separate
21 motion by Mr. Tree.

22 6. The case shall be **CLOSED.**

23 ///

24 //

25 /

26 current record – the ALJ's reasoning for giving the psychological opinions
little weight appears to be otherwise sufficient.

