

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
WASHINGTON

Jose N. v. Frank Bisignano, Commissioner of Social Security

Jose N. · No. 2:25-CV-0417-TOR · Decided April 9, 2026

SUMMARY

The United States District Court for the Eastern District of Washington denied Plaintiff Jose N.'s motion for summary judgment and affirmed the Commissioner of Social Security's denial of his Title II disability benefits application. The court reviewed the ALJ's evaluation of medical evidence, residual functional capacity, alleged malingering, mental impairments, and step-five findings.

CASE DETAILS

COURT	United States District Court for the Eastern District of Washington
JURISDICTION	United States District Court for the Eastern District of Washington
DECIDED	April 9, 2026
DOCKET	2:25-CV-0417-TOR
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff sought judicial review under the Social Security Act of the Commissioner's denial of his Title II application for disability insurance benefits and moved for summary judgment.
STANDARD OF REVIEW	The court affirms the Commissioner's decision unless it is not supported by substantial evidence or is based on legal error. Substantial evidence means more than a mere scintilla and is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Errors are harmless when inconsequential to the ultimate nondisability determination, assessed by reviewing the record as a whole.
PRECEDENTIAL VALUE	unknown
PARTIES	Jose N. v. Frank Bisignano, Commissioner of Social Security

TOPICS

- judicial review of agency action
- agency adjudication
- administrative law

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the ALJ properly evaluated the medical evidence and Plaintiff's alleged symptoms in determining his residual functional capacity.
2. Whether the ALJ erred by failing to account for alleged somatic symptom disorder and moderate mental limitations in the residual functional capacity.
3. Whether the ALJ properly found affirmative evidence of malingering and therefore applied the appropriate standard when evaluating Plaintiff's subjective symptom testimony.
4. Whether the Commissioner met the step-five burden by relying on vocational-expert testimony based on the ALJ's residual functional capacity assessment.

HOLDINGS

1. The ALJ properly evaluated the medical evidence and Plaintiff's subjective symptom allegations, and the RFC determination was supported by substantial evidence.
2. The ALJ did not err in finding affirmative evidence of malingering; therefore, the ALJ was not required to provide clear and convincing reasons for rejecting Plaintiff's subjective symptom testimony.
3. The ALJ's failure to separately identify or discuss the somatic symptom disorder diagnosis did not establish harmful error because a diagnosis alone does not establish a medically determinable impairment or functional limitations.
4. The ALJ did not commit reversible error at step five, and the Commissioner met the burden of showing that Plaintiff could perform jobs existing in significant numbers in the national economy.

KEY QUOTATIONS

"The Court will affirm the Commissioner's decision to deny benefits unless it "is not supported by substantial evidence or is based on legal error."" (Standard of Review)

"Therefore, the ALJ did not err when finding that there was affirmative evidence of malingering." (Discussion I.B)

"Accordingly, the Court finds that the ALJ did not commit harmful error, and remand is not warranted." (Discussion II)

FACTUAL BACKGROUND

Plaintiff alleged disability beginning July 16, 2019, and his last insured status expired June 30, 2022. The ALJ found severe spine, fibromyalgia, gastrointestinal, obesity, depressive, anxiety, and trauma-related impairments, but determined that Plaintiff retained the capacity for a limited range of light work with mental and social restrictions. The ALJ found affirmative evidence of malingering based on discrepancies in hearing testing and reported symptoms, malingering diagnoses in treatment records, and other inconsistencies. At step five, the ALJ relied on vocational evidence to find that Plaintiff could perform jobs existing in significant numbers in the national economy.

PROCEDURAL HISTORY

Plaintiff filed a Title II application for disability insurance benefits on September 22, 2022. The application was denied initially on April 27, 2023, and on reconsideration on April 1, 2024. After the ALJ denied benefits, Plaintiff sought judicial review in the Eastern District of Washington and moved for summary judgment. The court denied Plaintiff's motion, granted Defendant's response brief, affirmed the Commissioner's final decision, entered judgment for Defendant, and closed the case.

DISPOSITION

affirmed

CASES CITED

- Lambert v. Saul, 980 F.3d 1266, 1277-78 (9th Cir. 2020)
- Treichler v. Commissioner of Social Security Administration, 775 F.3d 1090, 1098, 1102 (9th Cir. 2014)
- Biestek v. Berryhill, 587 U.S. 97, 99, 103 (2019)
- Consolidated Edison Co. of New York v. N.L.R.B., 305 U.S. 197, 229 (1938)
- Molina v. Astrue, 674 F.3d 1104, 1115, 1117 (9th Cir. 2012)
- Carmickle v. Commissioner of Social Security Administration, 533 F.3d 1155, 1160 n.1, 1161-62 (9th Cir. 2008)
- Hoopai v. Astrue, 499 F.3d 1071, 1074-75 (9th Cir. 2007)
- Thomas v. Barnhart, 278 F.3d 947, 955 (9th Cir. 2002)
- Vasquez v. Astrue, 572 F.3d 586, 591 (9th Cir. 2009)
- Lingenfelter v. Astrue, 504 F.3d 1028, 1035-36 (9th Cir. 2007)
- Brown-Hunter v. Colvin, 806 F.3d 487, 488-89, 494 (9th Cir. 2015)
- Ferguson v. O'Malley, 95 F.4th 1194, 1199 (9th Cir. 2024)
- Smolen v. Chater, 80 F.3d 1273, 1284 (9th Cir. 1996)
- Smartt v. Kijakazi, 53 F.4th 489, 499-500 (9th Cir. 2022)
- Robbins v. Social Security Administration, 466 F.3d 880, 883 (9th Cir. 2006)
- Moisa v. Barnhart, 367 F.3d 882, 885 (9th Cir. 2004)
- Bahram H. v. Commissioner of Social Security, 2018 WL 6809487, at *3 (W.D. Wash. Dec. 27, 2018)
- Burrell v. Colvin, 775 F.3d 1133, 1140 (9th Cir. 2014)
- Key v. Heckler, 754 F.2d 1545, 1549-50 (9th Cir. 1985)
- Callahan v. Kijakazi, 657 F. Supp. 3d 1368, 1382 (E.D. Cal. 2023)
- Day v. Weinberger, 522 F.2d 1154, 1156 (9th Cir. 1975)

OPINION

Bisignano

PER CURIAM.

1 Apr 09, 2026

2 SEAN F. MCAVOY, CLERK

3 4

5 UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

6

7 JOSE N.,

NO. 2:25-CV-0417-TOR

8 Plaintiff,

ORDER ON PLAINTIFF'S MOTION

9 v. FOR SUMMARY JUDGMENT

10 FRANK BISIGNANO,

Commissioner of Social Security, 11 Defendant. 12 13 BEFORE THE COURT is Plaintiff's Motion for Summary Judgment for 14 judicial review of Defendant's denial of his application for Title II under the Social 15 Security Act (ECF No. 16). This matter was submitted for consideration without 16 oral argument. The Court has reviewed the record and files herein and is fully 17 informed. For the reasons discussed below, Plaintiff's Motion for Summary 18 Judgment (ECF No. 16) is DENIED and Defendant's denial of his application for 19 Title II under the Social Security Act is AFFIRMED. 20

1 JURISDICTION

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

4 STANDARD OF REVIEW

5 It is the administrative law judge's ("ALJ") job to "determine credibility, 6 resolve conflicts in the testimony, and resolve ambiguities in the record." Lambert 7 v. Saul, 980 F.3d 1266, 1277 (9th Cir. 2020) (quoting Treichler v. Comm'r of Soc. 8 Sec. Admin., 775 F.3d 1090, 1098 (9th Cir. 2014)). The Court will affirm the 9 Commissioner's decision to deny benefits unless it "is not supported by substantial 10 evidence or is based on legal error." Lambert, 980 F.3d at 1277 (quoting 11 Treichler, 775 F.3d at 1098 (internal quotations omitted). On that note, it is 12 important for the ALJ to provide sufficient reasons for the court to review the basis 13 of an administrative order and to identify where in the record those reasons are 14 reflected. Lambert, 980 F.3d at 1277 (quoting Treichler, 775 F.3d at 1098). 15 The Court reviews the agency's findings to determine whether they are 16 supported with substantial evidence. Biestek v. Berryhill, 587 U.S. 97, 99 (2019); 17 42 U.S.C. § 405(g). In this context, the threshold is not high. Biestek, 587 U.S. at 18 103. Substantial evidence is present when there is "more than a mere scintilla." 19 Biestek, 587 U.S. at 103 (quoting Consol. Edison Co. of New York v. N.L.R.B., 305 20 U.S. 197, 229 (1938)). In other words, "such relevant evidence as a reasonable 1 mind might accept as adequate to support a conclusion." Biestek, 587 U.S. at 103 2 (quoting Consol. Edison Co. of New York, 305 U.S. at 229). 3 The Court will not reverse for errors that are harmless. Molina v. Astrue,

674 4 F.3d 1104, 1117 (9th Cir. 2012). An error is harmless if it is “inconsequential to 5 the ultimate nondisability determination.” *Molina*, 674 F.3d at 1115 (quoting 6 *Carmickle v. Comm’r of Soc. Sec. Admin.*, 533 F.3d 1155, 1162 (9th Cir. 2008)). 7 To effectuate this, the Court reviews the record as a whole to determine whether 8 the error altered the result of the case. *Molina*, 674 F.3d at 1115.

9 FIVE STEP SEQUENTIAL EVALUATION PROCESS

10 The Commissioner uses a five-step sequential process to decide whether a 11 claimant is considered disabled. 20 C.F.R. § 404.1520(a)(1). The Commissioner 12 considers all evidence in the record to make this determination. 20 C.F.R. § 13 404.1520(a)(3). Disability is defined “as the inability to do any substantial gainful 14 activity by reason of any medically determinable physical or mental impairment 15 which can be expected to result in death or which has lasted or can be expected to 16 last for a continuous period of not less than 12 months.” 20 C.F.R. § 404.1505(a). 17 This requires a severe impairment that makes the claimant unable to complete the 18 claimant’s past relevant work or any other substantial gainful work. 20 C.F.R. § 19 404.1505(a). 20 At each step, the Commissioner may find a claimant either not disabled or 1 disabled. 20 C.F.R. § 404.1520(a)(4). If the claimant is found disabled then the 2 process stops and the determination is made. 20 C.F.R. § 404.1520(a)(4). 3 However, step three to four, the Commissioner assesses residual function capacity 4 (“RFC”). *Id.* Then steps four and five the Commissioner evaluates the claimant’s 5 claim. *Id.* 6 At step one, the Commissioner considers the claimant’s work activity and if 7 the Commissioner decides that the claimant is doing substantial gainful activity, 8 then the Commissioner will find the claimant is not disabled. 20 C.F.R. § 9 404.1520(a)(4)(i). Substantial gainful activity is both substantial and gainful work 10 activity. 20 C.F.R. § 404.1572. Substantial work activity means “doing significant 11 physical or mental activities” and may be done on a part-time basis, with less pay, 12 or less responsibility than before. 20 C.F.R. § 404.1572(a). Gainful work activity 13 is work done for pay or profit even if the profit is not realized. 20 C.F.R. § 14 404.1572(b). Put together, “Substantial gainful activity means work that—(a) 15 [i]nvolves doing significant and productive physical or mental duties; and (b) [i]s 16 done (or intended) for pay or profit.” 20 C.F.R. § 404.1510. 17 At step two, the Commissioner considers the claimant’s medical severity of 18 the claimant’s impairment(s). 20 C.F.R. § 404.1520(a)(4)(ii). If the claimant does 19 not have either a physical or mental impairment that is severely medically 20 determinable, or a combination of impairments satisfying the requirements the 1 Commissioner will deem the claimant as not disabled. 20 C.F.R. § 2 404.1520(a)(4)(ii). 3 At step three, the Commissioner continues to consider the claimant’s 4 medical severity of claimant’s impairment. 20 C.F.R. § 404.1520(a)(4)(iii). If the 5 claimant falls under one of the listings in appendix 1 and fulfills this subpart and 6 the durational requirement, then the Commissioner will determine the claimant as 7 disabled. 20 C.F.R. § 404.1520(a)(4)(iii). 8 At step four, the Commissioner shifts to address the claimant’s RFC and 9 work experience to see whether the claimant can make an adjustment to other 10 work. 20 C.F.R. § 404.1520(a)(4)(iv). If the Commissioner decides that the

11 claimant can still complete past relevant work, then the Commissioner rules the 12 claimant as not disabled. 20 C.F.R. § 404.1520(a)(4)(iv). 13 At step five, the Commissioner continues to review the claimant's residual 14 functional capacity with the claimant's age, education and work experience to 15 settle on any possible adjustments to other work. 20 C.F.R. § 404.1520(a)(4)(v). 16 If this is possible, then the Commissioner will rule that the claimant is not disabled. 17 However, if the Commissioner establishes the opposite, then the claimant is 18 deemed as disabled. 20 C.F.R. § 404.1520(a)(4)(v). 19 Once a claimant proves that: "(1) that she is not presently engaged in a 20 substantial gainful activity; (2) that her disability is severe, and (3) that her 1 impairment meets or equals one of the specific impairments described in the 2 regulations", then the claimant must be found disabled. *Hoopai v. Astrue*, 499 3 F.3d 1071, 1074 (9th Cir. 2007) (quoting *Thomas v. Barnhart*, 278 F.3d 947, 955 4 (9th Cir. 2002)). However, if the stated impairment does not meet the requirement 5 listed in the regulations, the claimant may "still establish a prima facie case of 6 disability by proving at step four that 'in addition to the first two requirements, ... 7 she is not able to perform any work that she has done in the past.'" *Hoopai*, 499 8 F.3d at 1074 (quoting *Barnhart*, 278 F.3d at 955). After the claimant establishes 9 their prima facie case at step five, the burden shifts to the agency to prove that "the 10 claimant can perform a significant number of other jobs in the national economy." 11 *Hoopai*, 499 F.3d at 1074–75 (quoting *Barnhart*, 278 F.3d at 955).

12 ALJ FINDINGS

13 The claimant alleges the onset of his disability was July 16, 2019. ECF No 14 16 at 3; Tr. 42. On September 22, 2022, Plaintiff filed a Title II application for 15 disability insurance under the Social Security Act ("SSA").1 Tr. 42. The 16 application was initially denied on April 27, 2023, and denied on reconsideration 17 on April 1, 2024. Tr. 42. The ALJ recognized that Plaintiff's last insured status 18 1 Plaintiff seeks judicial review of the denial of his applications under Title XVI 19 and Title II; however, the arguments and administrative record demonstrate only an application under Title II. Therefore, the Court will not address any Title XVI 20 application. 1 was met on June 30, 2022. Tr. 44. 2 At step one, the ALJ determined that Plaintiff did not engage in any 3 substantial gainful activity from his alleged onset date of July 16, 2019, to the last 4 date of his insured status, June 30, 2022. Tr. 44. 5 At step two, from the date of his last insured status, Plaintiff had severe 6 impairments including: spine disorders, fibromyalgia, diverticulosis, obesity, 7 gastrointestinal abnormality, depressive disorder, anxiety disorder, and trauma 8 disorder. Tr. 44. The ALJ determined that Plaintiff did not have an impairment or 9 combination of impairments that met or equaled the severity of the impairments 10 listed in 20 C.F.R. Part 404, Subpart P, Appendix 1. Tr. 45. 11 Additionally, the ALJ determined that Plaintiff's mental impairments, 12 considered individually or in combination, did not meet the criteria of listing under 13 12.04, 12.06 and 12.15. Tr. 45. The ALJ considered paragraph B criteria but did 14 not find either one extreme limitation or two marked limitations. Tr. 46-45. The 15 ALJ did not find any indication or presence of paragraph C criteria either. Tr. 47. 16 The ALJ established Plaintiff's RFC consisted of

the ability to perform light work with the following limitations: occasional climbing, balancing, stooping, kneeling, crouching, and crawling; able to understand, remember and carry out simple, repetitive work; working in approximately two-hour intervals with standard work breaks provided; occasional, superficial interaction with the public, co-workers and supervisors; able to accept instructions from supervisors; normal, routine workplace changes; and with work goals set by others.

1 Tr. 47.

2 At step 5, the ALJ found that Plaintiff did not have any relevant past work, is 35 years old, and has a marginal education. Tr. 55. Considering Plaintiff's age, education, work experience, and RFC, there are jobs in significant numbers in the national economy that Plaintiff could perform. Tr. 56. Some of these jobs include a housekeeping cleaner, small products assembler and production assembler. *Id.*

7 ISSUES

8 Plaintiff assigns three issues to the ALJ's decision on Plaintiff's denial of Title II Social Security Disability Insurance Benefits ("DIB"). ECF No. 16 at 2. I. Whether the ALJ improperly evaluated the medical evidence when creating the residual functional capacity. II. Whether the ALJ failed to meet the Commissioner's burden at step five. ECF No. 16 at 2.

14 DISCUSSION

15 I. The ALJ properly evaluated the medical evidence when determining Plaintiff's residual functional capacity. 17 "'The credibility determination is exclusively the ALJ's to make,' and '[w]e are constrained to review the reasons the ALJ asserts.'" *Lambert v. Saul*, 980 F.3d 1266, 1278 (9th Cir. 2020) (quoting *Brown-Hunter v. Colvin*, 806 F.3d 487, 494 (9th Cir. 2015)) (citation modified). When the ALJ determines the credibility of a claimant's subjective testimony, the ALJ uses a two-step process. *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009). The first step requires the ALJ to "determine whether the claimant has presented objective medical evidence of an underlying impairment which could reasonably be expected to produce the pain or other symptoms alleged." *Vasquez*, 572 F.3d at 591 (quoting *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035–36 (9th Cir. 2007)). The claimant only needs to "show that it could reasonably have caused some degree of the symptom." *Vasquez*, 572 F.3d at 591 (quoting *Lingenfelter*, 504 F.3d at 1035–36). 9 The second step states when the ALJ determines that a claimant for Social Security benefits is not malingering and has provided objective medical evidence of an underlying impairment which might reasonably produce the pain or other symptoms [he] alleges, the ALJ may reject the claimant's testimony about the severity of those symptoms only by providing specific, clear, and convincing reasons for doing so. 13 14 *Lambert v. Saul*, 980 F.3d 1266, 1277 (9th Cir. 2020) (quoting *Brown-Hunter v. Colvin*, 806 F.3d 487, 488–89 (9th Cir. 2015)) (citations omitted). "The clear and convincing standard is the most demanding required in Social Security cases." 17 *Ferguson v. O'Malley*, 95 F.4th 1194, 1199 (9th Cir. 2024) (quoting *Garrison v. Colvin*, 759 F.3d 995, 1014–15 (9th Cir. 2014)). 19 Pursuant to

this, the ALJ must “specifically identify the testimony [from a 20 claimant] she or he finds not to be credible and ... explain what evidence 1 undermines that testimony.” Lambert, 980 F.3d at 1277 (quoting Treichler v. 2 Comm’r of Soc. Sec. Admin., 775 F.3d 1090, 1102 (9th Cir. 2014)) (citations 3 omitted). Determining the credibility of a claimant’s testimony about the severity 4 of symptoms allows considerations including things such as: 5 (1) ordinary techniques of credibility evaluation, such as the claimant's reputation for lying, prior inconsistent statements concerning the 6 symptoms, and other testimony by the claimant that appears less than candid; (2) unexplained or inadequately explained failure to seek 7 treatment or to follow a prescribed course of treatment; and (3) the claimant's daily activities. 8 9 Smolen v. Chater, 80 F.3d 1273, 1284 (9th Cir. 1996). However, “[c]ontradiction 10 with the medical record is a sufficient basis for rejecting the claimant's subjective 11 testimony.” Carmickle v. Comm'r, Soc. Sec. Admin., 533 F.3d 1155, 1161 (9th Cir. 12 2008); Smartt v. Kijakazi, 53 F.4th 489, 499 (9th Cir. 2022). 13 However, if the ALJ finds malingering based on affirmative evidence, the 14 ALJ is not required to meet the high standard of providing clear and convincing 15 reasons. Robbins v. Soc. Sec. Admin., 466 F.3d 880, 883 (9th Cir. 2006). The 16 ALJ must provide evidence of malingering “such as a reputation for dishonesty, 17 conflicts between the claimant's testimony and his conduct, or internal 18 contradictions in the testimony.” Moisa v. Barnhart, 367 F.3d 882, 885 (9th Cir. 19 2004) (citations omitted). 20 1 Next, under 20 C.F.R. § 404.1520c, the ALJ’s guidelines for how to consider 2 and articulate medical opinions and prior administrative medical findings are laid 3 out. With these regulations, the ALJ is not required to provide “‘specific and 4 legitimate reasons’ for rejecting a treating or examining doctor's opinion.” Woods 5 v. Kijakazi, 32 F.4th 785, 792 (9th Cir. 2022) (citations omitted). 6 The new regulations focus on supportability and consistency when evaluating 7 the persuasiveness of an opinion. Woods, 32 F.4th at 791. Supportability “means 8 the extent to which a medical source supports the medical opinion by explaining 9 the ‘relevant ... objective medical evidence.’” Woods, 32 F.4th at 791-92 (quoting 10 20 C.F.R. § 404.1520c(c) (1)). On the other hand, “consistency means the extent to 11 which a medical opinion is ‘consistent ... with the evidence from other medical 12 sources and nonmedical sources in the claim.’” Woods, 32 F.4th at 792 (quoting 13 20 C.F.R. § 404.1520c(c)(2)). 14 A. RFC Determination 15 First, Plaintiff contends that the ALJ erred by failing to address his moderate 16 mental impairments in the RFC determination, specifically his somatic symptom 17 disorder. ECF No. 16 at 8-9. For example, Plaintiff refers to J. Regnier, Psy.D.’s 18 opinion. ECF No. 16 at 9. 19 On January 1, 2023, Dr. Regnier found that Plaintiff had a “long history of 20 centralized pain, significant depressed mood, and low level of functioning related 1 to pain.” Tr. 506. Dr. Regnier further observed that “[h]e was distractible, flat of 2 affect, but responsive throughout the interaction.” Tr. 504. Dr. Regnier noted 3 Plaintiff’s cooperative attitude, poor eye contact, restlessness, depressed mood, flat 4 affect, normal speech and rhythm and distractibility. Tr. 505. However, Dr. 5 Regnier noted that he was “not gravely disabled.” Tr. 505. As part of Plaintiff’s 6 treatment plan, Dr. Regnier advised cognitive processing therapy for four 7 appointments, then to reassess. Tr. 506. 8

The ALJ stated that “J. Regnier, PsyD, observed that although the claimant 9 presented as reserved with poor eye contact and a depressed mood, he was 10 cooperative throughout the behavioral health appointment.” Tr. 46. Continuing, 11 the ALJ stated that Dr. Regnier stated that Plaintiff was not disabled and suggested 12 that Plaintiff should “re-engage with cognitive processing therapy for 4 13 appointments followed by re-evaluation.” Tr. 46. 14 Plaintiff contends that the ALJ did not address Plaintiff’s mental impairments in 15 the RFC. ECF No. 16 at 8-9. Defendant responds that Plaintiff’s limitations 16 including “able to understand, remember and carry out simple, repetitive work” 17 and “occasionally superficial interaction with the public, co-workers and 18 supervisors” are examples of these mental impairments demonstrated in the RFC. 19 ECF No. 18 at 3; Tr. 47. 20 1 Plaintiff does not identify specific limitations that were not addressed in the 2 RFC. ECF No. 16 at 8-9. Plaintiff uses the ALJ’s use of Dr. Regnier’s opinion but 3 does not demonstrate how this exhibited a specific or stronger impairment. Rather, 4 Plaintiff argues that the ALJ erred in its reasoning. On that note, the ALJ properly 5 addressed these limitations in the RFC. This is a reasonable interpretation and 6 supported by the evidence. 7 Regarding Plaintiff’s argument about the ALJ’s reasoning, Plaintiff argues that 8 cooperation is not evidence of the absence of limitations and that failure to 9 cooperate does not show obstruction to the evaluation or is evidence of 10 malingering. ECF No. 16 at 9. However, the ALJ did not appear to use Dr. 11 Regnier’s opinion to provide evidence of malingering. Rather, his opinion was 12 used to determine limitations regarding Plaintiff’s ability to interact with others.

13 Tr. 46. Therefore, Plaintiff does not identify an error. Even if this did amount to 14 an error, it is unlikely it would have changed the outcome of the ALJ’s 15 determination. 16 Plaintiff reaffirms this argument that cooperation does not prove the absence of 17 limitations multiple times. ECF No. 16 at 11. Nevertheless, the ALJ provided 18 numerous citations of other supportive evidence for his determination. Tr. 42-57. 19 Also, Plaintiff does not cite authorities or provide further specifics for this 20 argument. For those reasons, Plaintiff did not identify an error. 1 Additionally, the ALJ’s analysis regarding Dr. Regnier’s opinion is a 2 reasonable conclusion and supported by Dr. Regnier’s report. The ALJ even noted 3 Plaintiff’s depressed mood, reservation and poor eye contact. Tr. 46. 4 Nevertheless, “[i]t is not the court’s role to ‘second-guess’ an ALJ’s reasonable 5 interpretation of a claimant’s testimony.” *Smartt v. Kijakazi*, 53 F.4th 489, 500 6 (9th Cir. 2022). 7 B. Malingering 8 Second, Plaintiff argues that the suggestions of malingering are speculative and 9 not determinative conclusions. ECF No. 16 at 9-10. Defendant responds that the 10 ALJ properly evaluated the evidence, and Plaintiff essentially argues that the ALJ 11 should have come to a different conclusion. ECF No. 18. 12 The ALJ found that Plaintiff’s statements regarding the intensity, persistence, 13 and limiting effects of his symptoms were not consistent with the record. Tr. 49. 14 The ALJ notes Plaintiff’s use of a cane or wheelchair but that there is no stated 15 medical necessity in the record for the use of these devices. Tr. 49. Additionally, 16 the ALJ found affirmative evidence of malingering that reduced the persuasiveness 17 of Plaintiff’s claims concerning his limitations. Tr. 49, 52. 18 On June 23, 2021,

Plaintiff visited an audiologist, McCrum to receive testing 19 for his hearing. Tr. 50. AUD McCrum found Plaintiff's hearing intact and could 20 hold a conversation at a normal level. Id. While Plaintiff reported hearing loss 1 amounting to 25-8000 Hz for each ear on Traditional Puretone Testing, this was 2 not consistent with "SRTs, Acoustic Reflexes or Otoacoustic emissions." Tr. 50- 3 51. Based on that, AUD McCrum opined that the discrepancies suggested 4 malingering. Tr. 51. 5 It was noted that on June 23, 2021, "Malingerer", "Person feigning illness" and 6 "Malingering" were listed on a "problem list" by the Plaintiff's treating provider, 7 Columbia Valley Health. Tr. 51. The ALJ notes Plaintiff's malingering diagnosis 8 listed under "active problem list" during a March 2022 visit and July 2022 visit. 9 Id. 10 During J. Despain, MD's visit with Plaintiff, Dr. Despain observed Plaintiff's 11 "slow, antalgic gait" and Plaintiff complained of chronic back and total body pain.

12 Tr. 51. Moreover, Dr. Despain stated that Plaintiff was suspected of being 13 malingering from a recent visit with neurology. Tr. 51, 757. 14 Plaintiff's argument that the opinions are not determinative and are speculative 15 is not supported by authority or the record. ECF No. 16 at 9-10. The standard 16 states that the ALJ must establish affirmative evidence of malingering, not 17 diagnostic. This means that suggestions of malingering can be enough. See ex. 18 Bahram H. v. Comm'r of Soc. Sec., 2018 WL 6809487, at *3 (W.D. Wash. Dec. 27, 19 2018) (citing Carmickle v. Comm'r, Soc. Sec. Admin., 533 F.3d 1155, 1160 n.1 (9th 20 Cir. 2008)). The ALJ provided different medical opinions suggesting malingering 1 due to discrepancies in the testing and alleged symptoms. Tr. 49-51. Additionally, 2 malingering was listed as an active problem by one of his providers. Tr. 51. This 3 in conjunction with evidence of discrepancies is not a mere isolated concern of 4 secondary gain but affirmative evidence of malingering. Burrell v. Colvin, 775 5 F.3d 1133, 1140 (9th Cir. 2014) ("Moreover, Dr. Riley merely suggested that 6 perhaps there was an issue of secondary gain—he did not affirmatively find that 7 Claimant was exaggerating or malingering."). Therefore, the ALJ did not err when 8 finding that there was affirmative evidence of malingering. 9 Plaintiff refers to different medical opinions that do not provide any suggestions 10 for malingering and argues that not one of the mental health experts found 11 malingering. ECF No. 16 at 9. However, not every medical opinion needs to 12 suggest malingering for there to be a proper finding of malingering with 13 affirmative evidence. Therefore, this argument fails. 14 C. Somatic Syndrome 15 Third, Plaintiff states the ALJ erred by not considering somatic syndrome as a 16 possible explanation and primary diagnosis. ECF No. 16 at 10-11. Plaintiff states 17 this conclusion by Dr. Montgomery is supported with evidence from Drs. Dodd 18 and Friedman's opinions. ECF No. 16 at 11. 19 Dr. Montgomery's report generally shows unremarkable presentation but refers 20 to Plaintiff's complaints of pain and other symptoms. Tr. 484-86. Dr. 1 Montgomery opined that Plaintiff could return to work. Tr. 487. Under diagnosis, 2 the report states that somatic symptom disorder is strongly suggested and that it is 3 believed this is the primary psychiatric diagnosis. Tr. 486. In his report, Dr. Dodd 4 reported "major depression with anxiety and somatization" and Dr. Friedman

noted 5 “overwhelming somatic symptoms” but did not make a specific diagnosis because 6 additional treatment was necessary. Tr. 483-84. 7 The ALJ found Dr. Rudd and Dr. Montgomery’s opinions persuasive. Tr. 53. 8 These evaluations were conducted in connection with Plaintiff’s L&I workers’ 9 compensation claim that occurred on December 12, 2013, while working as a box 10 stacker. Tr. 53. Dr. Montgomery opined that there was no evidence presented to 11 reopen Plaintiff’s workers’ compensation claim. Tr. 53. The opinions were based 12 on evidence from Dr. Patwardhan, Ma-C Blevins, PA-C Lake, RN McLeod, Dr. 13 Campbell and Dr. Despain. Tr. 53. 14 Defendant states that Drs. Rudd and Montgomery did not provide a functional 15 analysis regarding Plaintiff’s abilities but rather that the exam was unremarkable 16 and reopening the compensation case was not necessary. ECF No. 18 at 5. While 17 Plaintiff identifies support for the somatic syndrome diagnosis, Plaintiff does not 18 identify support alleging severe impairment from this order. ECF No. 16 at 11-12. 19 A failure to refer to a diagnosis in a specific opinion does not alone constitute 20 harmful error. The ALJ recognized that there were no functional limitations 1 suggested in these opinions. ECF No. 18 at 5; Tr. 53. A diagnosis does not 2 amount to a limitation or impairment as defined under the SSA. See *Key v. 3 Heckler*, 754 F.2d 1545, 1549-50 (9th Cir. 1985); *Callahan v. Kijakazi*, 657 F.

4 Supp. 3d 1368, 1382 (E.D. Cal. 2023) (“but mere diagnosis alone is not sufficient 5 to establish a medically determinable impairment, let alone functional 6 limitations.”). A diagnosis is not enough to show that the ALJ erred and that the 7 outcome determination would be different. 8 D. Dr. Metoyer & Mental Impairments 9 Fourth, Plaintiff contends the ALJ erred by not addressing the moderate 10 limitations in Paragraph B correctly. ECF No. 16 at 12. Plaintiff references Dr. 11 Metoyer’s opinion regarding his mental impairments and consistency with 12 Plaintiff’s claims. ECF No. 16 at 12. 13 Plaintiff met with Dr. Metoyer on December 12, 2021. Tr. 54. Dr. Metoyer 14 opined that his remote memory, recent memory and immediate memory were 15 impaired. Tr. 1415. Also, Plaintiff’s concentration and persistence were impaired 16 and he had difficulties with home tasks. Tr. 1415. Dr. Metoyer continues that 17 Plaintiff’s ability to interact with others and the public is “likely moderately to 18 markedly impaired due to anxiety, PTSD, mood symptoms and tendency to avoid 19 others.” Tr. 1415. Plaintiff’s ability to adhere to regular attendance requirements 20 in the workplace was moderately impaired. Tr. 1415. Plaintiff’s ability to 1 understand, remember, complete complex instructions, complete a work week or 2 day without interruption and deal with stress were all moderately impaired. Tr. 3 1415-1515. 4 Dr. Metoyer’s report provides many of Plaintiff’s claims and complaints, but 5 Dr. Metoyer also conducted mental tasks. Tr. 1415. Plaintiff could not complete 6 many of the tasks such as identifying three objects, a current event, or states that 7 border Washington. Tr. 1415. However, Dr. Metoyer noted that Plaintiff was 8 cooperative and engaged during the exam. Tr. 1413. 9 The ALJ found that Dr. Metoyer’s opinion was unpersuasive because it was 10 inconsistent with Plaintiff’s other treatment records demonstrating a diagnosis of 11 malingering and cooperation with medical providers. Tr. 55. The ALJ noted that 12 Dr. Metoyer’s opinions were not supported

by his own examination and review.

13 Tr. 55. Dr. Metoyer opined that Plaintiff had the ability to reason, understand and
14 adapt to some adaptation skills but also noted many impairments and limitations.

15 Tr. 55. The ALJ pointed out that Plaintiff told ARNP Benton the day before that
16 he could walk about half a mile before needing to stop but told Dr. Metoyer he 17 struggled to
be on his feet for more than five minutes. Tr. 54. 18 Plaintiff argues that Dr. Metoyer's opinion is
consistent with Plaintiff's 19 allegations. ECF No. 16 at 12. However, Defendant responds that the
ALJ found 20 contradictory objective evidence that Plaintiff's allegations were not consistent 1
with the medical evidence. ECF No. 18 at 3. In other words, the ALJ provided 2 evidence of
malinger, normal gait, unremarkable exams, etc. ECF No. 18 at 3. 3 Even if one medical
opinion is consistent with Plaintiff's claims does not mean that 4 the ALJ's interpretation and
determination is wrong or insufficiently supported. 5 The ALJ provided sufficient evidence to
discount Plaintiff's allegations. Simply 6 recognizing evidence against the ALJ's determination
does not mean that the 7 ALJ's determination was in error. 8 E. ARNP Benton & Physical
Impairments 9 Fifth, Plaintiff argues that Plaintiff's allegations of chronic pain limit his 10
physical functioning and that a light RFC is not sufficient. ECF No. 16 at 13. 11 Plaintiff states he
has additional or more severe functional limitations that preclude 12 work. ECF No. 16 at 13.
Plaintiff refers to Lisa Benton ARNP opinion stating her 13 opinion failed to sufficiently assess
these limitations or consider other diagnoses. 14 ECF No. 16 at 13. 15 ARNP Benton diagnosed
Plaintiff with chronic back pain and stomach issues.

16 Tr. 497. This provider did not find any specific functional limitations and exam
17 was generally unremarkable. Tr. 497-98. ARNP Benton noted that Plaintiff used a 18 cane but
was unsure whether this was a medical necessity. Tr. 498, 53. The ALJ 19 found ARNP Benton's
opinion persuasive and noted this opinion was consistent 20 with the record and treatment notes of
Dr. Despain and Dr. Rudd. Tr. 54 1 Plaintiff appears to argue that ARNP Benton did not accurately
assess him. 2 ECF No. 16 at 13. However, it is not the Court's job to determine whether a 3
medical provider appropriately conducted his or her examination. Furthermore, it 4 is not the
ALJ's role to make this determination, but rather to evaluate credibility. 5 *Lambert v. Saul*, 980
F.3d 1266, 1277 (9th Cir. 2020) (stating the ALJ's job is to 6 evaluate credibility and resolve
ambiguities and inconsistencies); *Day v. Weinberger*, 522 F.2d 1154, 1156 (9th Cir. 1975)
(stating that the ALJ must not 8 make his or her own assessments or refer to medical textbooks
regarding a 9 Plaintiff's condition). 10 II. The Commissioner Met his Burden at Step Five of the
Evaluation. 11 Plaintiff argues that the ALJ incorrectly relied on an opinion of a vocational 12
expert ("VE") regarding a hypothetical. ECF No. 16 at 13-14. Plaintiff asserts that 13 because the
ALJ incorrectly evaluated his functional abilities the hypothetical is 14 based on incorrect
assumptions. ECF No. 16 at 14. However, as Defendant 15 argues, Plaintiff did not identify any
errors that demonstrate the RFC determination 16 was incorrectly analyzed. Thus, the ALJ did not
base the hypothetical on any 17 incorrect assumptions and Plaintiff does not identify an error. 18

Plaintiff did not identify any harmful errors. Plaintiff failed to even argue that 19 any of the alleged errors amount to anything more than harmless errors. 20 Additionally, Plaintiff rarely cites authorities beyond the record for his arguments. 1|| ECF No. 16. Accordingly, the Court finds that the ALJ did not commit harmful error, and remand is not warranted. ACCORDINGLY, IT IS HEREBY ORDERED: 4 1. Plaintiffs Motion for Summary Judgment (ECF No. 16) is DENIED. 5 2. Defendant's Response Brief (ECF No. 18) is GRANTED. The 6 Commissioner's final decision is AFFIRMED. 7 The District Court Executive is directed to enter this Order, enter judgment 8 || for Defendant, furnish copies to counsel, and CLOSE this file. 9 DATED April 9, 2026. <> United States District Judge 12 13 14 15 16 17 18 19 20