

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Villalobos v. Commissioner of Social Security

Villalobos v. Commissioner of Social Security · No. 2:23-cv-1891-SCR · Decided March 31, 2025

OPINION

(SS) Villalobos v. Commissioner of Social Security

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 ISRAEL VILLALOBOS, No. 2:23-cv-1891-SCR

12 Plaintiff, 13 v. ORDER

14 COMMISSIONER OF SOCIAL

SECURITY,

15 Defendant. 16

17 18 Plaintiff seeks judicial review of a final decision of the Commissioner of Social Security 19
("Commissioner"), denying his application for Supplemental Security Income ("SSI") under 20
Title XVI of the Social Security Act ("the Act"), 42 U.S.C. §§ 1381-1383f.1 For the reasons that
21 follow, Plaintiff's motion for summary judgment will be DENIED, and Defendant's cross-
motion 22 for summary judgment will be GRANTED. 23 //// 24 //// 25 //// 26 1 SSI is paid to
financially needy disabled persons. 42 U.S.C. § 1382(a); Washington State Dept. of Social and
Health Services v. Guardianship Estate of Keffeler, 537 U.S. 371, 375 (2003) 27 ("Title XVI of
the Act, § 1381 et seq., is the Supplemental Security Income (SSI) scheme of benefits for aged,
blind, or disabled individuals, including children, whose income and assets fall 28 below specified
levels . . .").

1 I. PROCEDURAL BACKGROUND

2 Plaintiff was born on August 13, 1995, and received benefits based on disability as a 3 child.
Administrative Record ("AR") 26, 91. 2 On May 12, 2014, after Plaintiff's eighteenth 4 birthday,
he was found no longer disabled and therefore ineligible for benefits effective

5 November 24, 2014. AR 91. On March 25, 2016, ALJ Evangelina Hernandez upheld this

6 determination. AR 91, 103. 7 Plaintiff applied for SSI on March 26, 2021, alleging his August
13, 1995 birthdate was 8 also his disability onset date. AR 15. The application was disapproved
initially on August 13, 9 2021 and after reconsideration on November 17, 2021. Id. On July 12,
2022, ALJ Matilda Surh 10 presided over the telephonic hearing on Plaintiff's challenge to the

disapprovals. AR 68-84 11 (transcript). Plaintiff was present at the hearing with counsel. AR 15, 68. Victoria Rei, a 12 Vocational Expert (“VE”), also testified at the hearing. AR 68, 81. 13 On August 30, 2022, the ALJ found Plaintiff “not disabled” since Plaintiff’s March 26, 14 2021, application date. AR 15-27 (decision), 28-31 (exhibit list). The Appeals Council denied 15 Plaintiff’s request for review, leaving the ALJ’s decision as the Commissioner’s final decision. 16 AR 1-5 (decision and additional exhibit list). 17 Plaintiff filed this action on September 1, 2023. ECF No. 1. The parties consented to the 18 jurisdiction of the magistrate judge. ECF Nos. 7-8. The parties’ cross-motions for summary 19 judgment, based on the Administrative Record filed by the Commissioner, have been briefed. 20 ECF Nos. 16 (Plaintiff’s summary judgment motion), 18 (Defendant’s summary judgment 21 motion). No reply brief from Plaintiff is on file.

22 II. FACTUAL BACKGROUND

23 Plaintiff was born on August 13, 1995, and accordingly was, at age 25, a younger 24 individual under the regulations on the date of his SSI application. AR 26; see 20 C.F.R. §§ 25 404.1563(d), 416.963(c). Plaintiff has an eleventh-grade education. AR 322. Although he once 26 reported that he has never held a job, February 2016 medical records show that he was working in 27 recycling at the time. AR 321, 585. Plaintiff has also asserted that his conditions first rendered 28 2 Two copies of the AR are electronically filed as ECF Nos. 9-1 to 9-2 (AR 1 to AR 733). 1 him incapable of working on August 13, 2013. AR 321. His reported conditions include heart 2 problems, chronic asthma, paralyzed vocal chords, high blood pressure, and anxiety. AR 321.

3 III. LEGAL STANDARDS

4 The Commissioner’s decision that a claimant is not disabled will be upheld “if it is 5 supported by substantial evidence and if the Commissioner applied the correct legal standards.” 6 Howard ex rel. Wolff v. Barnhart, 341 F.3d 1006, 1011 (9th Cir. 2003). “‘The findings of the 7 Secretary as to any fact, if supported by substantial evidence, shall be conclusive’” Andrews 8 v. Shalala, 53 F.3d 1035, 1039 (9th Cir. 1995) (quoting 42 U.S.C. § 405(g)). 9 Substantial evidence is “more than a mere scintilla,” but “may be less than a 10 preponderance.” Molina v. Astrue, 674 F.3d 1104, 1110-11 (9th Cir. 2012). “It means such 11 evidence as a reasonable mind might accept as adequate to support a conclusion.” Richardson v. 12 Perales, 402 U.S. 389, 401 (1971) (internal quotation marks omitted). “While inferences from 13 the record can constitute substantial evidence, only those ‘reasonably drawn from the record’ will 14 suffice.” Widmark v. Barnhart, 454 F.3d 1063, 1066 (9th Cir. 2006) (citation omitted). 15 Although this Court cannot substitute its discretion for that of the Commissioner, the 16 Court nonetheless must review the record as a whole, “weighing both the evidence that supports 17 and the evidence that detracts from the [Commissioner’s] conclusion.” Desrosiers v. Secretary of 18 HHS, 846 F.2d 573, 576 (9th Cir. 1988); Jones v. Heckler, 760 F.2d 993, 995 (9th Cir. 1985) 19 (“The court must consider both evidence that supports and evidence that detracts from the ALJ’s 20 conclusion; it may not affirm simply by isolating a specific quantum of supporting evidence.”). 21 “The ALJ is responsible for determining credibility, resolving conflicts in medical 22 testimony, and resolving ambiguities.”

Edlund v. Massanari, 253 F.3d 1152, 1156 (9th

23 Cir. 2001). “Where the evidence is susceptible to more than one rational interpretation, one of 24 which supports the ALJ’s decision, the ALJ’s conclusion must be upheld.” Thomas v. Barnhart, 25 278 F.3d 947, 954 (9th Cir. 2002). However, the Court may review only the reasons stated by the 26 ALJ in his decision “and may not affirm the ALJ on a ground upon which he did not rely.” Orn 27 v. Astrue, 495 F.3d 625, 630 (9th Cir. 2007); Connett v. Barnhart, 340 F.3d 871, 874 (9th Cir. 28 2003) (“It was error for the district court to affirm the ALJ’s credibility decision based on 1 evidence that the ALJ did not discuss”). 2 The Court will not reverse the Commissioner’s decision if it is based on harmless error, 3 which exists only when it is “clear from the record that an ALJ’s error was ‘inconsequential to the 4 ultimate nondisability determination.’” Robbins v. Soc. Sec. Admin., 466 F.3d 880, 885 (9th Cir. 5 2006) (quoting Stout v. Commissioner, 454 F.3d 1050, 1055 (9th Cir. 2006)); see also Burch v. 6 Barnhart, 400 F.3d 676, 679 (9th Cir. 2005).

7 IV. RELEVANT LAW

8 SSI is available for every eligible individual who is “disabled.” 42 U.S.C. § 1381a (SSI). 9 Plaintiff is “disabled” if he is “unable to engage in any substantial gainful activity by reason of 10 any medically determinable physical or mental impairment which can be expected to result in 11 death or which has lasted or can be expected to last for a continuous period of not less than twelve 12 months.” 42 U.S.C. § 1382c(a)(3)(A); see also Bowen v. Yuckert, 482 U.S. 137, 140 (1987). 13 The Commissioner uses a five-step sequential evaluation process to determine whether an 14 applicant is disabled and entitled to benefits. 20 C.F.R. § 416.920(a)(4); Barnhart v. Thomas, 540 15 U.S. 20, 24-25 (2003) (setting forth the “five-step sequential evaluation process to determine 16 disability” under Title II and Title XVI). The following summarizes the sequential evaluation: 17 Step one: Is the claimant engaging in substantial gainful activity? If so, the claimant is not disabled. If not, proceed to step two. 18 20 C.F.R. § 404.1520(a)(4)(i), (b). 19 Step two: Does the claimant have a “severe” impairment? If so, 20 proceed to step three. If not, the claimant is not disabled. 21 Id. §§ 404.1520(a)(4)(ii), (c). 22 Step three: Does the claimant’s impairment or combination of impairments meet or equal an impairment listed in 20 C.F.R., Pt. 404, 23 Subpt. P, App. 1? If so, the claimant is disabled. If not, proceed to step four. 24 Id. §§ 404.1520(a)(4)(iii), (d). 25 Step four: Does the claimant’s residual functional capacity [RFC] 26 make him capable of performing his past work? If so, the claimant is not disabled. If not, proceed to step five. 27 Id. §§ 404.1520(a)(4)(iv), (e), (f). 28 1 Step five: Does the claimant have the residual functional capacity perform any other work? If so, the claimant is not disabled. If not, 2 the claimant is disabled. 3 Id. §§ 404.1520(a)(4)(v), (g). 4 The claimant bears the burden of proof in the first four steps of the sequential evaluation 5 process. 20 C.F.R. §§ 404.1512(a) (“In general, you have to prove to us that you are blind or 6 disabled”), 416.912(a) (same); Bowen, 482 U.S. at 146 n.5. However, “[a]t the fifth step of the 7 sequential analysis, the burden shifts to the Commissioner to demonstrate that the claimant is not 8 disabled and can engage in work that exists in significant numbers in the national economy.” Hill 9 v. Astrue, 698 F.3d 1153, 1161 (9th Cir. 2012); Bowen, 482 U.S. at 146

n.5.

10 V. THE ALJ'S DECISION

11 The ALJ made the following findings: 12 1. The claimant has not engaged in substantial
gainful activity since March 26, 2021, the application date (20 CFR 416.971 et seq.). 13

2. The claimant has the following severe impairments: asthma,
14 ventricular tachycardia, borderline intellectual functioning and general anxiety disorder (20
CFR 416.920(c)). 15

3. The claimant does not have an impairment or combination of
16 impairments that meet or medically equals the severity of one of the listed impairments in 20
CFR Part 404, Subpart P, Appendix 1 (20 17 CFR 416.920(d), 416.925 and 416.926). 18 4. After
careful consideration of the entire record, [the ALJ found] that the claimant has the residual
functional capacity [RFC] to 19 perform medium work as defined in 20 CFR 416.967(c) except he
is limited to simple, routine, repetitive tasks with occasional public 20 contact. He cannot have
any concentrated exposure to dust, fumes, gases, and other pulmonary irritants. 21

5. The claimant has no past relevant work (20 CFR 416.965).

22

6. The claimant was born on August 13, 1995 and was 25 years old,
23 which is defined as a younger individual age 18-49, on the date the application was filed (20
CFR 416.963). 24

7. The claimant has a limited education (20 CFR 416.964).

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8. Transferability of job skills is not an issue because the claimant
26 does not have past relevant work (20 CFR 416.968). 27 9. Considering the claimant's age,
education, work experience, and residual functional capacity, there are jobs that exist in significant
28 numbers in the national economy that the claimant can perform (20 1 CFR 416.969 and
416.969a). 2 10. The claimant has not been under a disability, as defined in the Social Security
Act, since March 26, 2021, the date the application 3 was filed (20 CFR 416.920(g)). 4 AR 18-27.
5 As noted, ALJ Surh concluded that Plaintiff was "not disabled" under Title XVI of the 6 Act. AR
27. 7

VI. ANALYSIS

8 Plaintiff's motion for summary judgment raises a single issue: Whether the ALJ 9 erroneously
discounted the opinion of a psychologist consultative examiner, Dr. W. Fahnbulleh, 10 in
assessing Plaintiff's RFC. ECF No. 16 at 9. The ALJ concluded that Plaintiff retained the 11 RFC
to perform medium work, with limitations that such work involve only "simple, routine, 12
repetitive tasks with occasional public contact" and not involve "concentrated exposure to dust, 13
fumes, gases, and other pulmonary irritants." AR 21. In doing so, the ALJ rejected some of Dr. 14
Fahnbulleh's findings that Plaintiff had moderate limitations in several functional areas. AR 25. 15
As explained below, the ALJ's decision was supported by substantial evidence. 16 A. Legal

Standards on the Role of Medical Opinions in ALJ Decision Making 17 Medical opinions are statements from physicians and other acceptable medical sources 18 that reflect, among other things, judgments about “what [the claimant] can still do 19 despite...impairment(s) and whether [the claimant has] one or more impairment-related 20 limitations or restrictions in the abilities listed in” 20 C.F.R. §§ 416.913(a)(2)(i)-(ii). 20 C.F.R. § 21 416.913(a)(2). While physicians may make medical notes in a claimant’s file, statements that do 22 not address the claimant’s functional limitations need not be weighed by the ALJ. See, e.g., 23 *Champagne v. Colvin*, 582 F. App’x 696, 697 (9th Cir. 2014) (unpublished) (rejecting assertion 24 that ALJ improperly disregarded treating physicians’ opinions because providers did not opine on 25 claimant’s functional limitations and claimant “identified no additional medically necessary 26 limitation that should have been included in the [RFC]”). 27 For any SSI application filed after March 27, 2017, no medical opinion or administrative 28 1 medical finding, including any submitted by the claimant, is given specific evidentiary weight, 2 such as controlling weight. 20 C.F.R. § 416.920c(a). Each such opinion is instead evaluated 3 based on supportability through objective medical evidence, consistency with other medical and 4 nonmedical sources, relationship with the claimant, specialization in the relevant area, and other 5 factors that seem to support or contradict the medical opinion. 20 C.F.R. § 416.920c(c). Of 6 these, supportability and consistency are most important. 20 C.F.R. § 416.920c(a). 7 An ALJ decision must articulate how persuasive it found each opinion, but it need not 8 articulate how it considered every factor for every medical opinion. 20 C.F.R. § 416.920c(b)(1). 9 If “a medical source provides multiple medical opinion(s) or prior administrative medical 10 finding(s)[,]” the ALJ need only specify how it “considered the medical opinions or prior 11 administrative medical findings from that medical source together in a single analysis using the 12 factors” listed above. *Id.* Because supportability and consistency are the most important factors, 13 the ALJ must explain how it considered them, but has discretion to discuss the other three as 14 appropriate. 20 C.F.R. § 416.920c(b)(2). When multiple opinions on one issue are equally well- 15 supported and consistent with the rest of the record, but not entirely consistent with each other, 16 the decision must articulate whichever combination of the remaining factors the ALJ considered 17 in deciding which opinion was the more persuasive. 20 C.F.R. § 416.920c(b)(3). 18 B. The Contested Psychological Examinations of Plaintiff 19 In connection with Plaintiff’s earlier disability-determination proceedings, Dr. James 20 Wakefield examined Plaintiff in April 2014. AR 421. Plaintiff reported to Dr. Wakefield that he 21 spent his days helping his father load and unload trucks and shopping with his friends. AR 421. 22 Dr. Wakefield observed that Plaintiff was “alert and cooperative” and “generally cheerful[.]” AR 23 422. Plaintiff had normal speech and adequate writing skills but “minimally adequate” verbal 24 skills. AR 422. His thought content was normal, and his orientation as to time, place, and person 25 was generally correct. AR 422. However, he had a deficit memory and was only capable of 26 simple mental calculations, not complex arithmetic. AR 422. His fund of knowledge was also 27 “borderline for his age.” AR 422. 28 Based on Plaintiff’s results on the WAIS-IV examination and

an IQ of 74, Dr. Wakefield 1 rated his intellectual ability as borderline. AR 422. Plaintiff exhibited average perceptual 2 reasoning, “low average” working memory, borderline verbal comprehension, and deficient 3 processing speed. AR 422-23. As to working memory, Plaintiff’s auditory memory was stronger 4 than his arithmetic skills. AR 423. Plaintiff’s WMS-IV results showed that his delayed memory 5 was in the bottom percentile for his age, while his verbal and visual memory were deficient. AR 6 423. 7 Based on these results, Dr. Wakefield diagnosed Plaintiff with Amnesic Disorder, 8 Communication Disorder, and Borderline Intellectual Functioning. AR 424. He reasoned that 9 Plaintiff had “low average” concentration, borderline intellectual and verbal ability, and deficient 10 verbal and visual memory. AR 424. Plaintiff was unable to handle his funds and would find it 11 difficult to complete tasks that would entail “substantial demands on making and retaining new 12 memories[.]” AR 424. Plaintiff also had a limited capacity to “make occupational, personal, and 13 social decisions in his best interests[.]” At the same time, Dr. Wakefield found that Plaintiff had 14 adequate concentration and persistence, and that he could interact with others at a minimally 15 acceptable level. AR 424. 16 In connection with the instant disability-related proceedings, Dr. Fahnbulleh evaluated 17 Plaintiff in July 2021. AR 483. During the examination, Plaintiff reported sporadic and 18 unpredictable symptoms of anxiety since elementary school, including difficulty breathing and 19 anxiety when leaving the house or around others. AR 483. These symptoms were “moderate to 20 severe” and had generally worsened and become more persistent over time. AR 483. Plaintiff 21 therefore only left the house for groceries, doctors’ appointments, or similar reasons. AR 484. 22 As of the evaluation, Plaintiff had no counseling but had been prescribed psychiatric medications, 23 which he stopped taking out of discomfort. AR 483-84. 24 Dr. Fahnbulleh found Plaintiff’s attitude cooperative and had no negative observations 25 about his outfit, grooming, motor activity, eye contact, speech, sensorium, orientation, or 26 intelligence. AR 485. He did observe impaired attention, but fair concentration and memory; 27 intact abstraction, calculation, judgment, thought process, and insight; and adequate fund of 28 knowledge. AR 485-86. Plaintiff’s mood and affect were anxious, and Dr. Fahnbulleh diagnosed 1 him with Generalized Anxiety Disorder. AR 486. He concluded that due to this disorder, 2 Plaintiff would experience mild limitations in understanding and performing simple instructions. 3 AR 486. Plaintiff would also experience moderate limitations in all other work-related abilities, 4 including the ability to (1) understand and perform complex instructions, (2) maintain regular 5 attendance in the workplace, (3) perform work activities on a consistent basis, (4) perform work 6 activities without special or additional supervision, (5) complete a normal workday or workweek 7 without interruptions, (6) accept instructions from supervisors, (7) interact with coworkers and 8 the public, and (8) manage the stress typically encountered in a competitive work environment. 9 AR 486-87. Dr. Fahnbulleh concluded that based on these limitations and Plaintiff’s prior 10 psychiatric and treatment history, the overall prognosis was “fair.” AR 487. 11 C. The ALJ’s Consideration of the Psychological Examinations 12 The ALJ discounted the opinions of both psychological examiners. She found

Dr. 13 Wakefield's opinion about Plaintiff's difficulties with tasks involving "making and retaining 14 [new] memories," interaction with others, and reasoning/decision making unpersuasive. AR 25. 15 She believed it to be inconsistent with both Dr. Fahnbulleh's opinion and prior administrative 16 psychological findings. AR 25. She also contrasted Dr. Wakefield's "extreme" social restrictions 17 against Plaintiff reporting that he enjoyed going shopping with his friends. AR 25. That Plaintiff 18 could help his father with loading trucks and "complete substantial cognitive testing putting forth 19 good effort" also undercut any assertion that Plaintiff would find it difficult to complete tasks and 20 make decisions. AR 25. 21 The ALJ similarly found Dr. Fahnbulleh's opinion as to certain moderate limitations 22 unpersuasive for several reasons. Those limitations were "not consistent with prior administrative 23 psychological findings." AR 25. The ALJ also questioned how the limitations were consistent 24 with Dr. Fahnbulleh's own findings that Plaintiff was friendly, made eye contact, and interacted 25 appropriately with him during the examination. AR 25. That Plaintiff had an "unremarkable 26 mental status evaluation" also undercut Dr. Fahnbulleh's conclusion that Plaintiff would struggle 27 to "maintain regular attendance, perform work activities on a consistent basis with the need of 28 additional supervision, complete a normal workday or workweek[,] and deal with usual stress[.]" 1 AR 25.3 The ALJ assumed this was based on Plaintiff's subjective complaints to Dr. Fahnbulleh. 2 AR 25. Finally, she argued that the medical record reflects some degree of independent 3 functioning because Plaintiff has made change, managed finances, helped load and unload his 4 father's truck, "work[ed] in recycling," and traveled to Texas. AR 25. 5 D. The ALJ Did Not Err in Finding Both of the Psychologist Examiners' Opinions 6 Unpersuasive 7 Plaintiff argues that ALJ Surh failed to credit the consistency between Dr. Wakefield's 8 opinion and Dr. Fahnbulleh's opinion, thereby improperly discounting the latter. ECF No. 16 at 9 13. Defendant responds that ALJ Surh had considered Dr. Wakefield's opinion but found it 10 inconsistent with both Dr. Fahnbulleh's opinion and prior administrative psychological findings. 11 ECF No. 18 at 11 (citing AR 25). Defendant further argues that ALJ Surh also found Dr. 12 Wakefield's opinion unsupported by Dr. Wakefield's own notes, something that Plaintiff does not 13 address with sufficient specificity. ECF No. 18 at 12 (citing Carmickle v. Commissioner, 533 14 F.3d 1155, 1161 n.2 (9th Cir. 2008)). To the extent that Plaintiff argues that the consistency of 15 the two opinions should have prompted ALJ Surh to find both opinions persuasive, Defendant 16 argues that the Court cannot prioritize that interpretation over the ALJ's because the latter is 17 reasonable. ECF No. 18 at 12 (citing Woods v. Kijakazi, 32 F.4th 785, 788 (9th Cir. 2022)). 18 The Court finds the record supports ALJ Surh's decision to discount as "not 19 persuasive[e]" the opinions of Dr. Wakefield and Dr. Fahnbulleh. As to Dr. Fahnbulleh, the ALJ 20 provided extensive reasons, grounded in the record, for not fully crediting all of the proposed 21 limitations. AR 25. While it is true that Dr. Wakefield's opinion was generally consistent with 22 Dr. Fahnbulleh's opinion, see ECF No. 16 at 10, 12-13, the ALJ's reasons for discounting both 23 were reasonable. As a result, it was not erroneous for the ALJ not to find that the former 24

reinforced the latter. In substance, Plaintiff has simply proposed an alternative interpretation of these two opinions. But because the ALJ's interpretation was rational, that is the interpretation. Although the decision says this was "Dr. Wakefield's opinion," the decision clearly separates the discussion of their opinions into separate paragraphs. AR 25. The Court agrees with Defendant that this is a scrivener's error that should not be held against the ALJ. See ECF No. 18 at 8, n.1. The Court must uphold. See *Woods*, 32 F.4th at 788. ALJ Surh's decision to discount Dr. Wakefield's opinion is also relatively consistent with ALJ Hernandez's decision in 2016. AR 97-98, 101, 103. The decision by ALJ Hernandez, like the decision at issue here, found that Plaintiff's RFC allowed him to perform medium work with some restrictions. AR 96. ALJ Hernandez credited Dr. Wakefield's opinion regarding "limitations on the nature of the tasks... [Plaintiff] can perform, the pace of performance and the environment in which he can perform them." AR 98. She then found that while some administrative psychological opinions, including Dr. Wakefield's, identified mental functional limitations and the way those might affect Plaintiff's capacities, all of those opinions concluded Plaintiff had some capacity to work. AR 101. In short, if ALJ Surh had found that Dr. Wakefield's opinion now merited a more limited RFC than it did in 2016, she would have been deviating from ALJ Hernandez's findings. The argument that Dr. Fahnbulleh's opinion should have been found persuasive because it was consistent with Dr. Wakefield's opinion fails. D. The ALJ Did Not Err in Considering Plaintiff's Daily Activities Plaintiff also challenges the contrast ALJ Surh drew between Dr. Fahnbulleh's proposed limitations and Plaintiff's ability to manage finances, help load and unload his father's truck, and travel to Texas. ECF No. 16 at 11 (citing AR 25). Plaintiff implies this is tantamount to requiring that a claimant be "completely bedridden or completely helpless to be found disabled." *Id.* (quoting *Thomas v. Sullivan*, 876 F.2d 666, 669 (8th Cir. 1989)). Plaintiff also cites *Forehand v. Barnhart*, which held that the relevant question is whether a claimant can "perform the requisite physical acts day in and day out, in the sometimes competitive and stressful conditions in which real people work in the real world." ECF No. 16 at 12 (quoting 364 F.3d 984, 988 (8th Cir. 2004)).

Defendant responds that although a claimant need not be completely bedridden, an ALJ may find that a claimant's daily activities undermine his claim for disability. ECF No. 18 at 11. Plaintiff omits that ALJ Surh list also included him working in recycling in 2016. AR 25, 585. Such work may more accurately reflect workplace stress than the other activities that the ALJ identifies. 1 (citing *Kimball v. Commissioner of Social Security*, 2022 WL 17343820 at *4 (E.D. Cal. Nov. 30, 2022)). Defendant adds that this applies "[e]ven if the claimant experiences some difficulty or 3 pain[.]" ECF No. 18 at 11 (quoting *Smartt v. Kijakazi*, 53 F.4th 489, 499 (9th Cir. 2022)). 4 ALJ Surh did not assert that Plaintiff's activities of daily life are categorically inconsistent with a 5 finding of disability, but that they are specifically inconsistent with Dr. Fahnbulleh's findings of 6 moderate limitations in almost every listed category. AR 25. This

approach sanctioned by the 7 case law. The plaintiff in *Smartt*, for example, could cook, clean, care for her daughter, do 8 laundry, and complete various chores if she paced herself. *Smartt*, 53 F.4th at 499-500. The 9 Ninth Circuit agreed with the ALJ that these tasks reflected many of the “capabilities ... necessary 10 for obtaining and maintaining employment” and were inconsistent with the plaintiff’s allegations 11 of “10/10” pain. *Id.* at 500. 12 Similarly, at issue is Dr. Fahnbulleh’s assertion that Plaintiff would struggle to (1) 13 understand and perform complex instructions, (2) maintain regular attendance in the workplace, 14 (3) perform work activities on a consistent basis, (4) perform work activities without special or 15 additional supervision, (5) complete a normal workday or workweek without interruptions, (6) 16 accept instructions from supervisors, (7) interact with coworkers and the public, and (8) manage 17 the stress typically encountered in a competitive work environment. AR 25, 486-87. In 18 discounting these limitations, ALJ Surh reasonably balanced Dr. Fahnbulleh’s opinion against 19 activities that involve Plaintiff’s purported weaknesses. Holding a position in recycling suggests 20 Plaintiff can maintain regular attendance and perform tasks on a consistent basis without 21 additional instructions, while helping his father suggests he can interact with coworkers. That 22 Plaintiff traveled to Texas may also suggest some capacity to manage complexity. There was no 23 error in the ALJ’s consideration of Plaintiff’s daily activities in this manner. 24 E. The ALJ Did Not Err in Discounting Conclusions Drawn from Plaintiff’s Self- 25 Reported Symptoms 26 ALJ Surh noted that some of Dr. Fahnbulleh’s opinions were apparently based not on his 27 own observations, but on Plaintiff’s subjective complaints. AR 25. Plaintiff argues that case law 28 recognizes the subjective nature of mental health opinions and how they may rely on self-reported 1 symptoms more than opinions on physical maladies. ECF No. 16 at 12 (citing *Blankenship v. 2 Bowen*, 874 F.2d 1116, 1121 (6th Cir. 1989); *Poulin v. Bowen*, 817 F.2d 865, 873–74 (D.C. Cir. 3 1987); *Buck v. Berryhill*, 869 F.3d 1040, 1049 (9th Cir. 2017)). Defendant responds that ALJ 4 Surh did not discount Dr. Fahnbulleh’s opinion because it was based on self-reported information. 5 ECF No. 18 at 9 (citing *Buck*, 869 F.3d at 1049). Rather, she discounted it because the presented 6 objective evidence, overall evaluation, and explanation did not support the conclusions. ECF No. 7 18 at 9-10. 8 An ALJ shall not credit an individual’s testimony regarding symptoms, like pain, in the 9 absence of “objective medical evidence of an underlying impairment” that could reasonably result 10 in such symptoms. *Garrison v. Colvin*, 759 F.3d 995, 1014 (9th Cir. 2014) (quoting *Lingenfelter 11 v. Astrue*, 504 F.3d 1028, 1035–36 (9th Cir. 2007) (quoting *Bunnell v. Sullivan*, 947 F.2d 341, 12 344 (9th Cir. 1991))). This standard distinguishes between symptoms and objective evidence, 13 which includes both laboratory evidence and medical signs. See 20 CFR § 416.902(k). A sign is 14 defined as any abnormality “that can be observed, apart from your statements (symptoms).” 20 15 CFR § 416.902(l) (emphasis added). Courts have consequently held that a doctor’s “restatement” 16 of the plaintiff’s symptoms, based solely on the plaintiff’s “own ‘perception or description’ of his 17 problems[,]” cannot serve as the objective evidence needed for a finding of impairment. *Ukolov 18 v. Barnhart*, 420 F.3d 1002, 1005-06 (9th Cir.

2005). 19 Precedent recognizes a difference between reporting requirements for mental and physical 20 disabilities. Symptoms that would prevent someone from functioning in the workplace may not 21 manifest “while being treated and while limiting environmental stressors[.]” Garrison, 759 F.3d 22 at 1017. This also applies to a mental evaluation that occurs outside of treatment. 23 At minimum, however, a clinical diagnosis relying solely on self-reported symptoms 24 cannot be completely unsubstantiated by objective medical evidence. Even in Blankenship, the 25 Sixth Circuit held that “the examination was supported by specific and complete medical 26 findings” and was therefore more persuasive than the ALJ acknowledged. 874 F.2d at 1121. The 27 ALJ had discounted this opinion in part because it was based on a single examination and did not 28 “present a clear diagnostic picture.” *Id.* The Sixth Circuit then quoted Poulin, which held that 1 ALJs should not discount psychiatric opinions “simply because of the relative imprecision of the 2 psychiatric methodology or the absence of substantial documentation, unless there are other 3 reasons to question the diagnostic techniques.” *Id.* (quoting Poulin, 817 F.2d at 873–74) 4 (emphasis added). 5 The Ninth Circuit’s opinion in Buck does not contradict this. The medical expert at issue 6 did consider the plaintiff’s self-reported challenges in keeping a job, but he “also conducted a 7 clinical interview and a mental status evaluation.” Buck, 869 F.3d at 1049. Although the Ninth 8 Circuit held that an ALJ’s discretion “to reject opinions based on self-reports does not apply in 9 the same manner” to allegations of a mental disability, it ultimately refused to discount the 10 medical opinion for its “partial reliance on...self-reported symptoms[.]” *Id.* (emphasis added). 11 As in Buck, the consultative examiner, Dr. Fahnbulleh, both interviewed Plaintiff and 12 observed his mannerisms during the examination. See AR 483-86. Unlike in Buck, however, 13 ALJ Surh noted a disconnect between the clinical observations and the conclusions based on self- 14 reported symptoms. AR 25. The only substantial limitation Dr. Fahnbulleh observed firsthand 15 was Plaintiff’s attention span, and he never explained how this results in the anticipated 16 limitations in Plaintiff’s work-related capabilities. AR 485. This led ALJ Surh to conclude these 17 limitations were based on Plaintiff’s self-reported difficulties. AR 25. This alone may not have 18 warranted rejecting Dr. Fahnbulleh’s opinion, but it does reduce its probative value. ALJ Surh 19 was therefore justified in weighing this opinion against Plaintiff’s ability to perform certain tasks 20 and prior administrative findings regarding Dr. Wakefield’s similar opinion. See *supra* VI.A.1-2. 21 F. Any Consistency Between Dr. Fahnbulleh’s Factual Findings and Opinion Does 22 Not Show Error 23 Plaintiff argues that Dr. Fahnbulleh’s own examination findings support his proposed 24 limitations. ECF No. 16 at 13. Without further explanation, Plaintiff highlights the findings of 25 impaired attention, fair memory and concentration, anxious mood, congruent affect, and overall 26 fair prognosis. *Id.* at 13-14 (citing AR 485-87). 27 As discussed above, and as Defendant again responds, if more than one interpretation of 28 the evidence is reasonable, the ALJ’s interpretation prevails. See *supra* VI.A.1; Woods, 32 F.4th 1 at 788; ECF No. 18 at 9. Plaintiff consequently cannot demonstrate that Dr. Fahnbulleh’s opinion 2 || should be found persuasive solely by describing evidence consistent with

this opinion. He must 3 || instead demonstrate that ALJ Surh's contrary finding lacks support in fact or law. As discussed 4 || above, all his attempts to do so fail.

5 VII. CONCLUSION

6 Plaintiff has failed to demonstrate that ALJ Surh erred in finding Dr. Fahnbulleh's opinion 7 || on Plaintiffs work-related limitations unpersuasive. No error in the administrative decision 8 | merits reversal. 9 IT IS HEREBY ORDERED that: 10 1. Plaintiffs motion for summary judgment (ECF No. 16) is DENIED; 11 2. The Commissioner's cross-motion for summary judgment (ECF No. 18) is 12 | GRANTED; 13 3. This Commissioner's final decision in this matter is AFFIRMED; and 14 4. The Clerk of the Court shall enter judgment for the Defendant and close this case. 15 6

DATED: March 28, 2025 17 18 /

19 SEAN C. RIORDAN

UNITED STATES MAGISTRATE JUDGE

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