

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Cecil C. v. Bisignano

No. 24-cv-09473-SK (N.D. Cal. Aug. 4, 2025) · No. 24-cv-09473-SK · Decided August 4, 2025

OPINION

Corhn v. Colvin

PER CURIAM.

1 2 3

4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6

CECIL C.,1

7 Case No. 24-cv-09473-SK Plaintiff,

8 ORDER DENYING PLAINTIFF’S

v. MOTION FOR SUMMARY

9 JUDGMENT; GRANTING

FRANK BISIGNANO, 2 DEFENDANT’S MOTION FOR

10 SUMMARY JUDGMENT

Defendant. 11 Regarding Docket Nos. 10, 11 12 This matter comes before the Court upon
consideration of Plaintiff Cecil C.’s motion for 13 summary judgment and the cross-motion for
summary judgment filed by Defendant, the 14 Commissioner of Social Security (the
“Commissioner”). This Court has jurisdiction pursuant to 15 42 U.S.C. § 1383(c), and both parties
have consented to the jurisdiction of a magistrate judge. 16 (Dkt. Nos. 6, 7.) Pursuant to Civil
Local Rule 16-5, the motions have been submitted on the 17 papers without oral argument.
Having carefully considered the administrative record, the parties’ 18 papers, relevant legal
authority, and the record in the case, the Court hereby GRANTS Plaintiff’s 19 motion and
DENIES the Commissioner’s cross-motion for summary judgment for the reasons set 20 forth
below.

21 BACKGROUND

22 Plaintiff was born on September 26, 1983. (Administrative Record (“AR”) 130, 347.) 23
Plaintiff previously received disability benefits from May 25, 2007 to July 1, 2017. (AR 99.) In a
24 March 20, 2020 decision, the Social Security Administration determined that Plaintiff was no
25 1 Plaintiff’s name is partially redacted in compliance with Federal Rule of Civil Procedure 26
5.2(c)(2)(B) and the recommendation of the Committee on Court Administration and Case
Management of the Judicial Conference of the United States. 27 2 Frank Bisignano became the

Commissioner of Social Security on May 7, 2025. Pursuant 1 longer disabled, and that he had not been disabled since July 1, 2017. (Id.) 2 On September 30, 2021, Plaintiff filed a new application for disability benefits, alleging 3 that he was disabled beginning September 4, 2012. (AR 342, 344.) On October 6, 2021, (AR 4 340), and January 8, 2022, (AR 349), Plaintiff filed claims for supplemental social security 5 income. 6 On September 12, 2023, Plaintiff, accompanied by Plaintiff's former representative, 7 Abigail Riley, testified at a hearing before the Administrative Law Judge ("ALJ"). (AR 70.) A 8 vocational expert also testified at the hearing. 9 The ALJ found that Plaintiff could not assert that he was disabled prior to March 20, 10 2021—the date of the prior decision finding Plaintiff nondisabled. (AR 48 (citing Chavez v. 11 Bowen, 844 F.2d 691, 693 (9th Cir. 1988)).) The ALJ found that Plaintiff had not engaged in 12 substantial gainful activity since September 30, 2021, the date of the disability application. (AR 13 51.) The ALJ further determined that Plaintiff has several severe impairments, including chronic 14 pain syndrome, mild right hip degenerative arthritis, right side sciatica, major depressive disorder, 15 unspecified bipolar and related disorder, generalized anxiety disorder, and post-traumatic stress 16 disorder. (Id.) However, the ALJ found Plaintiff's obesity non-severe because "the evidence fails 17 to indicate any significant findings related to the claimant's obesity, alone or in combination with 18 his other impairments, suggesting it results in no more than minimal limitation in the ability to 19 perform basic work activities." (Id.) The ALJ also rejected Plaintiff's contention that chronic 20 back pain and rule-out substance induced mood disorder were severe impairments, finding that 21 these complaints were not established by the evidence as medically determinable impairments. 22 (Id.) 23 The ALJ then found that Plaintiff does not have a listed impairment or medically 24 equivalent impairment, (id.), and that Plaintiff retained the following residual functional capacity 25 ("RFC"): "can lift and/or carry 20 pounds occasionally and 10 pounds frequently; can stand and/or 26 walk for 2 hours in an 8-hour workday; can sit for 6 hours in an 8-hour workday; can occasionally 27 stoop, kneel, crouch, and crawl; [and] can perform low stress work" (AR 53.) The ALJ 1 changes, and occasional interaction with the public. (Id.) Relying on this RFC and considering 2 Plaintiff's age, education, and work experience, the ALJ concluded that Plaintiff "is not disabled 3 under section 1614(a)(3)(A) of the Social Security Act." (AR 60-61.) 4 Plaintiff contends that the ALJ erred in assessing the severity of Plaintiff's obesity and 5 chronic back pain, evaluating Plaintiff's subjective symptom testimony, considering the 6 persuasiveness of the medical opinions, and determining Plaintiff's RFC. (Dkt. No. 10.)

7 ANALYSIS

8 A. Standard of Review. 9 A federal district court may not disturb the Commissioner's final decision unless it is based 10 on legal error or the findings of fact are not supported by substantial evidence. 42 U.S.C. § 11 405(g); Reddick v. Chater, 157 F.3d 715, 720 (9th Cir. 1998). "Substantial evidence means more 12 than a mere scintilla but less than a preponderance; it is such relevant evidence as a reasonable 13 mind might accept as adequate to support a conclusion." Andrews v. Shalala, 53 F.3d 1035, 1039 14 (9th Cir. 1995). To determine whether substantial

evidence exists, courts must look at the record as a whole, considering both evidence that supports and undermines the findings by the Administrative Law Judge (“ALJ”). *Reddick*, 157 F.3d at 720. The ALJ’s decision must be upheld, however, if the evidence is susceptible to more than one reasonable interpretation. *Id.* at 720-21. B. Legal Standard for Establishing a Prima Facie Case for Disability. Disability is the “inability to engage in any substantial gainful activity” because of a medical impairment which can result in death or “which has lasted or can be expected to last for a continuous period of not less than 12 months.” 42 U.S.C. § 423(d)(1)(A). To determine whether a plaintiff is disabled, an ALJ applies a five-step sequential evaluation process. *Bowen v. Yuckert*, 482 U.S. 137, 140-42 (1987); 20 C.F.R. § 404.1520. The plaintiff bears the burden of establishing a prima facie case for disability in the first four steps of evaluation. *Gallant v. Heckler*, 753 F.2d 1450, 1452 (9th Cir. 1984). However, the burden shifts to the Commissioner at step five. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). 1 substantial gainful activity. 20 C.F.R. § 416.920(b). Second, the claimant must have a “severe” 2 impairment. 20 C.F.R. § 416.920(c). To be considered severe, a medical impairment must 3 significantly limit physical or mental ability to do basic work activities and must be of twelve 4 months duration or be expected to last for at least twelve months. (*Id.*) Third, if the claimant’s 5 impairment meets or equals one of the impairments listed in Appendix I to the regulation (a list of 6 impairments presumed severe enough to preclude work), benefits are awarded without 7 consideration of the claimant’s age, education, or work experience. 20 C.F.R. § 404.1520(d). 8 Fourth, if the claimant’s impairments do not meet or equal a listed impairment, the ALJ will assess 9 and make a finding about the claimant’s residual functional capacity (“RFC”) based on all relevant 10 medical and other evidence in the claimant’s case record. 20 C.F.R. § 416.920(e). The RFC 11 measurement describes the most an individual can do despite his or her limitations. *Id.* § 12 404.1545(a)(1). If the claimant has the RFC to perform past relevant work, benefits will be 13 denied. See *id.* § 404.1520(f). If the claimant cannot perform past relevant work, the ALJ will 14 proceed to step five. *Id.* 15 At step five, the ALJ determines whether the claimant can make an adjustment to other 16 work. 20 C.F.R. § 404.1520(g). If the claimant can make the adjustment to other work, the ALJ 17 will find the claimant is not disabled; if the claimant cannot make an adjustment to other work, the 18 ALJ will find that the claimant is disabled. *Id.* at 404.1520(e) and (g). There are two ways to 19 make this determination: (1) by the testimony of an impartial vocational expert or by reference to 20 the Medical-Vocational Guidelines at 20 C.F.R. pt. 404, subpt. P, app.2. *Id.* 21 C. Whether an Impairment is Severe at Step Two. 22 Under step two, “[a]n impairment or combination of impairments is not severe if it does 23 not significantly limit [a claimant’s] physical or mental ability to do basic work activities.” 20 24 C.F.R. § 916.922. Additionally, under the second step, an impairment must last, or be expected to 25 last, for at least twelve months. 20 C.F.R. §§ 416.909; 416.920(a)(4)(ii). Importantly, an 26 impairment must be established by objective medical evidence (medical signs, laboratory findings, 27 or both) from an acceptable medical source and cannot be established based on a claimant’s 1 (“[I]mpairment(s)

must result from anatomical, physiological, or psychological abnormalities that 2 can be shown by medically acceptable clinical and laboratory diagnostic techniques. . . . We will 3 not use your statement of symptoms, a diagnosis, or a medical opinion to establish the existence of 4 an impairment(s).”) 5 The step-two inquiry has been defined as “a de minimis screening device to dispose of 6 groundless claims.” *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996.) A medical impairment 7 “can be found ‘not severe’ only if the evidence establishes a slight abnormality that has no more 8 than a minimal effect on an individuals [sic] ability to work.” *Id.* Nevertheless, a plaintiff must 9 still meet his burden to show “that he suffers from a medically determinable impairment” and 10 “that these impairments or their symptoms affect his ability to perform basic work activities.” 11 *Edlund v. Massanari*, 253 F.3d 1152, 1159-60 (9th Cir. 2001) (citing *Soc. Sec. Rulings* 96-3p and 12 96-7p); see also *Hurter v. Astrue*, 465 Fed.Appx. 648, 650 (9th Cir. 2012) (plaintiff “had the 13 burden of proving that her impairments affected her ability to perform basic work activities”). If 14 “there is no allegation of a physical or mental limitation or restriction of a specific functional 15 capacity, and no information in the case record that there is such a limitation or restriction,” then 16 the ALJ “must consider the individual to have no limitation or restriction with respect to that 17 functional capacity.” *Soc. Sec. Ruling* 96-8p. Additionally, when claimants are successfully 18 treated with over-the-counter medication and other conservative treatment, an impairment is not 19 severe. *Parra v. Astrue*, 481 F.3d 742, 750-51 (9th Cir. 2007). 20 1. Obesity 21 The ALJ noted Plaintiff’s consistent record of obesity but reasoned that “the evidence fails 22 to indicate any significant findings related to [Plaintiff’s] obesity, alone or in combination with his 23 other impairments, suggesting it results in no more than minimal limitation in the ability to 24 perform basic work activities.” (AR 51.) The ALJ then pointed to Plaintiff’s ability “to perform 25 basic household chores, generally care for his own personal hygiene, walk/hike, and take public 26 transportation” to conclude “that the claimant’s obesity is non-severe.” (*Id.* (citing AR 429-35, 27 990, 718).) 1 two. (Dkt. No. 10, p. 8-10.) Plaintiff argues for a finding of severity because: (1) providers 2 “indicated symptoms such as gait abnormalities, chronic back, hip, and neck pain, [and] 3 arthritis”—“the sort of symptoms exacerbated by obesity per [SSR 19-2p]”—in the same records 4 where obesity was notated, (Dkt. No. 10, p. 9 (citing AR 603, 616; AR 719-29; AR 909); (2) “the 5 clinicians regularly provided nutrition counseling, indicating that they did not consider Plaintiff’s 6 obesity as non-severe,” (*Id.* (citing AR 584, 586; AR 732-34)); and (3) the ALJ is instructed by 7 SSR 19-2p to “take into account the fact that obesity increases musculoskeletal pain . . . ,” (Dkt.

8 No. 12, p. 2-3).

9 Obesity is a severe impairment where it “significantly limits [the claimant’s] physical or 10 mental ability to do basic work activities” SSR 19-2p. Courts have repeatedly upheld ALJs’ 11 decisions to consider obesity non-severe where the record does not contain any evidence of 12 functional limitations caused by obesity. See *Burch v. Barnhart*, 400 F.3d 676, 683 (9th Cir. 13 2005) (finding the ALJ did not err at step two for failing to consider obesity where the plaintiff 14

had “not pointed to any evidence of functional limitations due to obesity”); see also *Shorter v. Saul*, 777 Fed.Appx. 209, 211 (9th Cir. 2019) (“The Administrative Law Judge (ALJ) reasonably concluded that obesity was not a severe impairment because no medical evidence showed any functional limitations associated with obesity.”). Here, Plaintiff does not point to any support in the record that his obesity has limited or restricted his functional capacity. Instead, Plaintiff points to records where providers independently noted both Plaintiff’s obesity and other symptoms. (Dkt. No. 10, p. 9 (citing AR 21 603, 616; AR 719-29; AR 909).) However, none of these providers noted a causal link between obesity and any other symptom, nor did they opine that Plaintiff’s obesity prevents or limits his functioning. Plaintiff also points to evidence that providers offered him nutritional counseling, 24 (id. (citing AR 584, 586; AR 732-34)), but nutritional counseling is not evidence of a functional limitation. Notably, Plaintiff himself did not allege limitations caused by his obesity in his disability report. (See AR 371 (listing depression, bipolar, pins in both legs, trouble doing tasks, trouble standing and walking, and asthma as physical and mental conditions limiting Plaintiff’s hearing with the ALJ. (See AR 74-75 (claiming Plaintiff’s inability to work is due to his leg and back pain, curved spine, bipolar disorder, deep depression, and anxiety).) Finally, Plaintiff contends that the ALJ “ignore[d] SSR 19-2p.” (Dkt. No. 12, p. 2.) The Court disagrees, given the ALJ’s explicit consideration of obesity at step two. (AR 51.) In conclusion, the ALJ did not err in finding obesity to be a non-severe impairment.

2. Chronic Back Pain

The ALJ cited the lack of evidence establishing Plaintiff’s alleged chronic back pain as a medically determinable impairment. (AR 51.) Plaintiff argues that the ALJ erred in finding chronic back pain is not a severe impairment. (Dkt. No. 10, p. 10.) A claimant who alleges disability based on subjective symptoms “(1) [] must produce objective medical evidence of an impairment or impairments; and (2) [] must show that the impairment or combination of impairments could reasonably be expected to (not that it did in fact) produce some degree of symptom.” *Smolen*, 80 F.3d at 1283. Under the second prong, the claimant must produce some evidence of a reasonable inference of causation, but he is not required to produce scientific studies or other evidence that the impairment would make pain inevitable. *Id.* at 1283. For example, in *Smolen*, the Ninth Circuit held that physicians’ opinions stating that the claimant’s medical impairment could reasonably be expected to have caused her alleged symptoms were sufficient to establish a causal relationship. *Id.* Here, Plaintiff alleges that the ALJ erred in finding no medically determinable impairment for his chronic back pain because his “history of hip displacement and surgery and the subsequent degeneration of his hips, combined with his obesity” could reasonably produce his symptoms. 22 (Dkt. No. 10, p. 11.) However, unlike in *Smolen*, where the plaintiff could point to her physicians’ opinions establishing possible causation, Plaintiff fails to provide any evidence from the record that to show that the ALJ was wrong in failing to reasonably conclude Plaintiff’s hip impairment caused his chronic back pain. (AR 74.) Even if the ALJ erred in finding Plaintiff’s chronic back pain to be non-severe, Plaintiff fails to show harmful error. A court

“may not reverse an ALJ’s decision on account of an error 1 omitted), superseded on other grounds by 20 C.F.R. § 404.1502(a). A finding of non-severity is 2 harmless where the ALJ extensively discusses any associated limitations to the impairment at step 3 four. *Lewis v. Astrue*, 498 F.3d 909, 911 (9th Cir. 2007). 4 Here, the ALJ extensively discussed limitations imposed by Plaintiff’s back pain at step 5 four, citing his medical history and reported symptoms, (AR 55 (citing AR 97, 718, 963); AR 56 6 (citing AR 960, 963)), treatment records, (AR 55 (citing AR 719, 900); AR 56 (AR 959, 964)), 7 aggravating factors, (AR 56 (citing AR 963)), and a consultative medical evaluation considering 8 Plaintiff’s low back pain, (AR 55 (citing AR 947-50)). Therefore, any error in finding Plaintiff’s 9 chronic back pain non-severe is harmless. 10 In conclusion, the ALJ did not err in finding chronic back pain to be a non-severe 11 impairment, but even if he did, any such error is harmless. 12

D. Plaintiff’s Credibility Assessment. 13 “[T]he ALJ is responsible for determining credibility, resolving conflicts in medical 14 testimony, and for resolving ambiguities.” *Reddick*, 157 F.3d at 722. “The ALJ’s findings, 15 however, must be supported by specific, cogent reasons.” *Id.* In evaluating the credibility of a 16 claimant’s subjective symptom testimony, an ALJ must engage in a two-step analysis. *Molina*, 17 674 F.3d at 1112 (citing *Vasquez v. Astrue*, 752 F.3d 586, 591 (9th Cir. 2009)). 18 First, the ALJ must determine if there is “objective medical evidence of an underlying 19 impairment which could reasonably be expected to produce the pain or other symptoms alleged.” 20 *Id.* (quoting *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007)). “Once the claimant 21 produces medical evidence of an underlying impairment, the Commissioner may not discredit the 22 claimant’s testimony as to subjective symptoms merely because they are unsupported by objective 23 evidence.” *Berry v. Astrue*, 622 F.3d 1228, 1234 (9th Cir. 2010) (citation omitted). 24 Second, if there is no evidence of malingering, “the ALJ can reject the claimant’s 25 testimony about the severity of her symptoms only by offering specific, clear and convincing 26 reasons for doing so.” *Lingenfelter*, 504 F.3d at 1036 (citation omitted). “General findings are 27 insufficient; rather, the ALJ must identify what testimony is not credible and what evidence 1 permitted to consider a number of factors including: (1) inconsistencies in the record concerning 2 Plaintiff’s symptoms; (2) any unexplained or inadequately explained failure to seek treatment or to 3 follow a prescribed course of treatment; (3) Plaintiff’s daily activities; and (4) observations of 4 treating and examining physicians and other third parties. See *Smolen*, 80 F.3d at 1284. If the 5 ALJ supports his credibility determination with substantial evidence in the record, the Court may 6 not “second-guess that decision.” *Morgan v. Comm’r of the Soc. Sec. Admin.*, 169 F.3d 595, 600 7 (9th Cir. 1999) (internal quotation marks and citation omitted). 8

1. Hip and Back Pain. 9 The ALJ recounted Plaintiff’s subjective symptoms testimony in his decision. (AR 54.) 10 Plaintiff testified that he has back and leg pain that render him unable to work. (*Id.*) Plaintiff 11 explained that his pain generally renders him unable to move on a monthly to weekly basis, but 12 can be as frequent as every other day. (*Id.*) He can lift and carry 40 to 50 pounds inconsistently, 13 and 15 to 20 pounds more consistently. (*Id.*) Walking can be a problem every couple of months 14 to every

week. (Id.) He reported needing to shift his weight if he is standing in line and 15 sometimes needs a cane. (Id.) He takes pain medication. (Id.) 16 The ALJ found Plaintiff's "medically determinable impairments could reasonably be 17 expected to cause the alleged symptoms," but that his "statements concerning the intensity, 18 persistence and limiting effects of [the alleged] symptoms are not entirely consistent with the 19 medical evidence and other evidence in the record." (AR 54.) The ALJ reasoned that "the 20 claimant's statements . . . are inconsistent because the evidence as a whole indicates that, despite 21 his impairments, the claimant can perform a range of sedentary work with the nonexertional 22 limitations set forth in the residual functional capacity finding above." (Id.) As to hip pain, the 23 ALJ noted that although Plaintiff had a history of hip surgeries and walked with a limp, the 24 medical evidence showed only mild right hip degenerative arthritis, 5/5 muscle power, and normal 25 sensation. (AR 55-56.) In addition, Plaintiff reported that his pain improved with treatment (heat, 26 massage, and chiropractic adjustment). (Id.) Similarly, although Plaintiff complained of low back 27 pain and some (but not all) examinations found limited range of motion, his examination findings 1 responsiveness to treatment (a Toradol injection, exercising, stretching). (Id.) The ALJ also 2 reasoned that "the claimant's daily activities are not limited to the extent one would expect, given 3 the complaints of disabling symptoms and limitations." (AR 58.) The ALJ noted that Plaintiff 4 can walk 15-30 minutes to the grocery store, hikes, goes on vacation, provides for his own 5 hygiene, performs household chores, makes simple microwave meals, take public transportations, 6 attends appointments, and takes care of his disabled mother and sister. (Id.) 7 Plaintiff argues that the ALJ erred by "improperly focus[ing] on the need for objective 8 evidence," not discussing whether Plaintiff's obesity might exacerbate his experience of pain, and 9 "selectively" considering Plaintiff's daily activities. (Dkt. No. 10, pp. 12-13.) Plaintiff also cites 10 to evidence that he had surgical scars, tenderness, a limp, reduced range of motion, inability to do 11 toe-heel walking, and pain with flexion. (Id.) In addition, Plaintiff argues that the ALJ erred in 12 citing evidence of medical improvement because Plaintiff's symptoms wax and wane. (Id.) 13 The ALJ offered specific, clear and convincing reasons for discounting Plaintiff's 14 complaints regarding his symptoms. See *Nadon v. Bisignano*, ___F.4th___, 2025 WL 2089066, at 15 *4 (9th Cir. July 25, 2025) (finding that ALJ provided specific, clear, and convincing reasons for 16 discounting testimony where the "ALJ summarized [the plaintiff's] testimony about her 17 limitations and identified inconsistencies, including [the plaintiff's] own assertions about her daily 18 and work activities that indicated she was 'not as limited as one would expect from an individual 19 alleging disability.'"). Notably, the ALJ considered the mild clinical findings regarding Plaintiff's 20 limitations, evidence of improvement with conservative treatment, and Plaintiff's daily activities 21 suggesting his pain is not debilitating. (AR 54, 58.); See *Nadon*, 2025 WL 2089066, at *4 (finding 22 daily activities—including handling personal care, performing household chores, going camping, 23 and caring for others as a personal care attendant—to be inconsistent with subjective symptom 24 testimony); *Warre v. Comm'r of Soc. Sec.*, 439 F.3d 1001, 1006 (9th Cir.

2006) (“Impairments 25 that can be controlled effectively with medication are not disabling....”); Castillo v. Dudek, No. 26 5:23-CV-05909-EJD, 2025 WL 929412, at *5 (N.D. Cal. Mar. 27, 2025) (discounting subjective 27 symptom testimony where inconsistent with physical examination findings). 1 Plaintiff’s obesity exacerbated his pain because, as discussed supra pp. 5-7, Plaintiff did not 2 present evidence connecting his obesity to his hip or back pain. Plaintiff’s proposed alternative 3 interpretation of the record is also unavailing. It is not the Court’s role to second-guess the ALJ’s 4 reasonable interpretation of Castillo’s testimony and the record. Burch v. Barnhart, 400 F.3d 676, 5 679 (9th Cir. 2005) (“Where evidence is susceptible to more than one rational interpretation, it is 6 the ALJ’s conclusion that must be upheld.”). 7 2. Mental Health Symptoms. 8 The ALJ also noted Plaintiff’s mental health symptom testimony—Plaintiff has bipolar 9 disorder, anxiety, and depression, he keeps to himself on certain days, and he takes Zoloft 10 (generic). (Id.) (AR 54.) The ALJ acknowledged Plaintiff’s mental health diagnoses and related 11 symptoms. (AR 56.) However, Plaintiff’s mental status examinations also found that he had a 12 logical thought process, adequate insight and judgment, normal memory and attention, and other 13 findings consistent with a functional mind. (AR 56-57.) The ALJ also noted Plaintiff’s daily 14 activities, discussed above. (AR 58.) Plaintiff argues that the ALJ erred in evaluating the 15 evidence and points to different evidence supporting the severity of his mental health symptoms. 16 (Dkt. No. 10, pp. 15-16.) Plaintiff does not renew this argument in his reply brief. (Dkt. No. 12.) 17 Moreover, Plaintiff’s argument fails because he does not show that the ALJ erred, he merely 18 contends that the Court should adopt an alternative reading of the record. As previously 19 discussed, de novo review of the record is not within the Court’s power. See Burch, 400 F.3d at 20 679. 21 In conclusion, the Court finds that the ALJ did not err in evaluating Plaintiff’s credibility. 22 E. Weighing Medical Evidence.

23 In 2017, the Social Security Administration revised its rules for evaluating medical 24 evidence. Woods v. Kijakazi, 32 F.4th 785, 791 (9th Cir. 2022). Under the revised regulations, 25 “there is not an inherent persuasiveness to evidence from [government consultants] over [a 26 claimant’s] own medical source(s), and vice versa.” Id. (quoting Revisions to Rules Regarding the 27 Evaluation of Medical Evidence, 82 Fed. Reg. at 5844). “The most important factors” that the 1 “consistency.” Id. (quoting 20 C.F.R. § 404.1520c(a)). Supportability means the extent to which 2 a medical source supports the medical opinion by explaining the “relevant . . . objective medical 3 evidence.” 20 C.F.R. § 404.1520c(c)(1). Consistency means the extent to which a medical 4 opinion is “consistent . . . with the evidence from other medical sources and nonmedical sources in 5 the claim.” 20 C.F.R. § 404.1520c(c)(2). 6 “The revised regulations recognize that a medical source’s relationship with the claimant is 7 still relevant when assessing the persuasiveness of the source’s opinion.” Woods, 32 F.4th at 792 8 (citing 20 C.F.R. § 404.1520c(3)). Therefore, “an ALJ can still consider the length and purpose 9 of the treatment relationship, the frequency of examinations, the kinds and extent of examinations 10 that the medical source has performed or ordered from specialists, and whether the medical source 11 has examined the claimant or merely

reviewed the claimant's records." Id. (citing 20 C.F.R. § 404.1520cI(3)(i)-(v)). That said, "the ALJ no longer needs to make specific findings regarding these relationship factors." Id. 14 "Even under the new regulations, an ALJ cannot reject an examining or treating doctor's 15 opinion as unsupported or inconsistent without providing an explanation supported by substantial 16 evidence." Id. An ALJ must "articulate . . . how persuasive" it finds "all of the medical opinions" 17 from each doctor or other source, 20 C.F.R. § 404.1520c(b), and "explain how [it] considered the 18 supportability and consistency factors" in reaching these findings. 20 C.F.R. § 404.1520c(b)(2). 19 The ALJ considered two mental health opinions: a psychological evaluation performed by 20 Dr. Nicole Kirsch, Psy.D. on September 20, 2021 and a consultative psychological evaluation 21 performed by Dr. Aparna Dixit, Psy.D. on October 3, 2022. (AR 57.) After considering both 22 medical opinions, the ALJ concluded that both opinions were "partially persuasive." (AR 59.) 23 Plaintiff contends that "the ALJ erred by failing to find Dr. Kirsch's report the more persuasive of 24 the two and adopting Dr. Dixit's opinion as to Plaintiff's functional impairments." (Dkt. No. 10, 25 p. 21.) 26 A. Dr. Aparna Dixit, Psy.D. 27 Dixit diagnosed Plaintiff with unspecified anxiety disorder and found that he would have 1 with the public, and maintaining pace and persistence over two hour increments; but he would 2 have no difficulty with simple instructions or interacting with coworkers. (AR 991.) 3 The ALJ's finding of Dixit's opinion as "partially persuasive" is supported by substantial 4 evidence. The ALJ summarized Dixit's report, finding that, his "opinion has some support from 5 the examination findings, . . . which showed good performance on many parts of the mental status 6 exam, but some difficulty with concentration." (AR 59.) The ALJ concluded, "considering the 7 record as a whole, including the claimant's treatment records and his testimony, the undersigned 8 has further limited the [Plaintiff] to low stress work" (Id.) 9 Plaintiff argues that the ALJ erred in adopting Dixit's opinion because it was "internally 10 inconsistent and too brief, superficial, and unsubstantiated by testing to be persuasive." (Dkt. No. 11 10, pp. 19-20.) The Court disagrees. The ALJ considered both the supportability and consistency 12 of the opinion and provided substantial evidence to both adopt and discount the opinion. (AR 59.) 13 Given that Plaintiff does not contest the discounting of the opinion, the Court focuses on 14 the evidence supporting the adoption of the opinion. The ALJ sufficiently found Dixit's opinion 15 supported by her evaluation, which included a clinical interview, mental status examination, and 16 record review. (Id.; AR 989.) The ALJ recounted the tests performed, (AR 57), fully summarized 17 Dixit's examination findings, (id.), compared the test results to her examination findings, (id.), and 18 found opinion to "have some support from the examination findings, which showed good 19 performance on many parts of the mental status exam, but some difficulty with concentration, (AR 20 59). Further, to the extent that Plaintiff disagrees with the consistency of some of Dixit's exam 21 findings and opinion, the ALJ agreed with Plaintiff, finding that the opinion has "some support 22 from the examination findings" and rendered the opinion "partially persuasive." (Id. (emphasis 23 added).) 24 Plaintiff also relies on *Mitchell v. Kijakazi*, No. 20-17381, 2022 WL 301551, at *1

(9th 25 Cir. Feb 1, 2022) to argue that the ALJ erred by relying on Dixit’s opinion because it “failed to 26 mention or consider Appellant’s traumatic history or [Post Traumatic Stress Disorder (“PTSD”)].” 27 (Dkt. No. 10, p. 19.) In Mitchell, which also involved evaluation of a report by Dixit, the Ninth 1 in the record” stemming from the fact that the claimant “watched her father murder her mother by 2 strangulation when she was just four years old.” Id. at *1. Here, the ALJ did consider Plaintiff’s 3 PTSD, the facts are less startling, and the ALJ did not rely “almost exclusively” on Dixit’s report. 4 Therefore, the Court does not find Plaintiff’s claim persuasive. Furthermore, to the extent Plaintiff 5 relies on Mitchell as general evidence for Dixit’s persuasiveness, past reports made under different 6 circumstances do not render Dixit’s opinion unpersuasive here. 7 In conclusion, the Court finds that the ALJ did not err in finding Dr. Dixit’s medical 8 opinion “partially persuasive” and incorporating part of her opinion into his RFC findings. 9 B. Dr. Nicole Kirsch, Psy.D. 10 Kirsch diagnosed Plaintiff with PTSD, unspecified bipolar and related disorder, and 11 substance use disorder. (AR 633.) She found that he would have moderate to marked challenges 12 following complex instructions, paying attention, maintaining pace, interacting with the public and 13 coworkers; and he would have extreme difficulty responding to changes, completing a normal 14 workday without intrusive psychological symptoms, and getting to work on time or at all. (AR 15 634.) 16 The Court finds the ALJ’s conclusion that Kirsch’s opinion was “partially persuasive” is 17 also supported by substantial evidence. The ALJ recounted the tests performed, (AR 57), fully 18 summarized Kirsch’s examination findings, (id.), compared the test results to her examination 19 findings (id.), and found her opinion to be partially persuasive, (AR 59). However, the ALJ 20 questioned both the supportability and the consistency of her findings, concluding that “the 21 marked and extreme limitations found by Kirsch are out of proportion to the examination findings 22 discussed above and are not supported by the claimant’s treatment notes, which shows waxing and 23 waning of the claimant’s mental health symptoms, but overall no more than moderate 24 impairment.” (AR 60.) 25 An ALJ can discount a doctor’s opinion where the doctor’s assessment of severe 26 limitations was “inconsistent with the medical record” and with the doctor’s “own unremarkable 27 mental status examinations.” Kitchen v. Kijakazi, 82 F.4th 732, 738 (9th Cir. 2023). Here, the 1 examination findings.” For example, the ALJ cited Kirsch’s finding that Plaintiff has marked 2 limitations in maintaining attention and concentration for two-hour segments,” (AR 57 (citing AR 3 631)), despite noting that Plaintiff “was able to maintain adequate concentration and attention 4 throughout the evaluation” (AR 60 (citing AR 635).) Kirsch also found Plaintiff to have 5 marked limitations in “getting along and working with others” and “interacting appropriately with 6 the general public,” (AR 57 (citing AR 631)), despite mental examination notes saying that “[h]e 7 maintained a consistently cooperative attitude and was consistently willing to answer questions 8 asked by the examiner; he often went into excessive and sometimes unnecessary detail when 9 answering questions.” (AR 60 (citing AR 635).) 10 The ALJ also discounts Kirsch’s opinions by finding that they were not supported by 11 Plaintiff’s

treatment notes that indicate “overall no more than moderate impairment.” (AR 60.) 12 The ALJ provided substantial evidence in support of his finding. He noted that Plaintiff’s 13 symptoms wax and wane, and that while treatment notes have shown “sad, depressed mood, 14 blunted and flat affect, depressive cognitions and obsessions, thought blocking and poverty of 15 thought, and guarded demeanor,” they also note “euthymic or neutral mood, full affect, clear 16 speech, logical thought process, unremarkable thought content, thought process, and perception, 17 alert or normal attention, appropriate demeanor for situation, appropriate insight and judgment, 18 full orientation, no suicidal ideation, and grossly intact memory.” (AR 56 (citing AR 648, 773, 19 779, 997, 999, 1008, 1010, 1012, 1016, 1017, 1029, 1039, 1042, 1046, 1050, 1054, 1058-59).) To 20 the extent Plaintiff contests the ALJ’s interpretation of Plaintiff’s treatment notes as showing 21 “overall no more than moderate impairment,” (AR 60), “[e]ven when the evidence is susceptible 22 to more than one rational interpretation, we must uphold the ALJ’s findings if they are supported 23 by inferences reasonably drawn from the record.” *Molina*, 674 F.3d at 1110. 24 Plaintiff relies on *Moody v. Berryhill*, No. 16-cv-3646-JSC, 2017 WL 3215353 (N.D. Cal. 25 July 28, 2017) to argue that “[mental status exams] cannot constitute substantial evidence of long- 26 term mental health.” (Dkt. No. 10, p. 10.) However, *Moody* does not support Plaintiff’s 27 contention that mental status exams cannot constitute substantial evidence. Rather, in *Moody*, the 1 record Plaintiff’s ‘mental status’ as either ‘normal’ or ‘abnormal,’” to “disregard the medical 2 evidence of Plaintiff’s mental impairments” was erroneous because it is “ambiguous” and “not 3 dispositive of Plaintiff’s mental health as a whole.” *Id.* at *10. 4 Unlike *Moody*, the ALJ did not rely on an “ambiguous” and a “minor” part of the mental 5 status exam to make his finding of “overall no more than minor impairment.” Instead, the ALJ’s 6 citations include treatment notes narrating Plaintiff’s condition and mental status exam results that 7 specify multiple tested areas of Plaintiff’s mental condition. (AR 56 (citing AR 648, 773, 779, 8 997, 999, 1008, 1010, 1012, 1016, 1017, 1029, 1039, 1042, 1046, 1050, 1054, 1058-59).) 9 Therefore, the Court finds unavailing Plaintiff’s argument that the ALJ’s use of the mental status 10 exam cannot constitute substantial evidence for discounting Kirsch’s opinion. 11 Furthermore, Plaintiff’s argument that the ALJ erred in finding Kirsch’s opinions as 12 inconsistent because “Plaintiff regularly reported depression, sought treatment for it, and was 13 prescribed anti-depressant medication,” lacks merit because it fails to challenge the severity noted 14 by the ALJ. (Dkt. No. 10, p. 20.) 15 Finally, Plaintiff argues that the ALJ erred in not finding Kirsch’s opinion more persuasive 16 than Dixit’s opinion because Kirsch’s report was longer and based on more tests. (Dkt. No. 10, p. 17 20 (citing AR 626).) However, the “kinds and extent of examinations and testing the medical 18 source has performed . . .” is a factor that ALJs “may, but are not required to, explain” when 19 articulating his articulation of medical opinions, and the most important factors are supportability 20 and consistency. 20 C.F.R. § 404.1520c. Therefore, the Court finds Plaintiff’s argument 21 unpersuasive in the face of the ALJ’s adverse supportability and consistency findings.³ 22 In

conclusion, the ALJ did not err in finding Kirsch's medical opinion as "partially 23 persuasive" and incorporating part of her opinion into the ALJ's RFC findings. 24 25 3 In reply, Plaintiff argues for the first time that, in finding Kirsch's opinion inconsistent, the ALJ "failed to note that Kirsch's testing was mainly in the area of emotional functioning and 26 relied on the results of those tests (i.e., the presence of a trauma history resulting in depression, anxiety, interruptive memories, hypervigilance, irritation, and violence), together with her clinical 27 interview." (Dkt. No. 12, p. 9.) As Plaintiff did not raise this argument in his opening brief, the F. Plaintiff's RFC Determination 1 Plaintiff's arguments concerning the ALJ's error in "failing to find either Plaintiff's 2 chronic pain or obesity to be severe" and therefore "fail[ing] to properly consider them as part of 3 Plaintiff's RFC" are derivative of Plaintiff's arguments at step two. (Dkt. No. 10, p. 21.) 4 Plaintiff's argument of the ALJ's failure to consider Plaintiff's "severe anxiety and symptoms of 5 PTSD" given the "evidence of marked and severe impairments in several work related areas of 6 functioning" is also derivative of the ALJ's weighing of medical evidence. (Id. at p. 22.) Having 7 discussed both arguments previously, the Court does not repeat the discussion here. See *Stubbs- 8 Danielson v. Astrue*, 539 F.3d 1169, 1175-76 (9th Cir. 2008) (rejecting step five argument based 9 on the fact that it was derivative of an earlier argument rejected by the court). 10 Plaintiff also asserts that, in finding Dixit's and Kirsch's opinions both partially 11 persuasive, then ". . . undercutting Dr. Kirsch's opinion[,] . . . the ALJ here failed to base the RFC 12 assessment on anything but his own opinions." (Dkt. No. 12, p. 12.) In support of this argument, 13 Plaintiff cites *Cox v. Kijakazi*, No. C 21-09850 WHA, 2023 WL 4188214 (N.D. Cal. June 23, 14 2023) and *Corvelo v. Kijakazi*, No. 20-cv-01059-WHA, 2022 WL 1189885 (N.D. Cal. Apr. 21, 15 2022). In both cases, however, the ALJ rejected uncontested opinions of multiple treating and 16 examining physicians. *Cox*, 2023 WL 4188214, at *7 ("Of particular concern is that the ALJ 17 essentially rejected the opinions of claimant's treating physicians. All of these doctors opined that 18 claimant had a greater degree of mental impairment than the degree of impairment found by the 19 ALJ . . ."); *Corvelo*, 2022 WL 1189885, at *5 ("The problem lies in the ALJ's rejection of all 20 medical opinions on claimant's mental impairments, leaving none on which the ALJ could rest his 21 conclusion."). Here, Dixit and Kirsch provided conflicting opinions on Plaintiff's mental 22 impairments, and the ALJ found both partially persuasive, adopting elements of both opinions. 23 See *Althoff-Gromer v. Comm'r of Soc. Sec.*, No. 2:18-cv-00082-KJN, 2019 WL 1316710, at *13 24 (E.D. Cal. Mar. 22, 2019) ("The ALJ's RFC determination need not precisely reflect any 25 particular medical provider's assessment."). 26 To the extent Plaintiff argues that the ALJ "ignored Plaintiff's past trauma, his history of 27 requiring special education services, his very limited education without even a high school 1 diploma, and the fact that he has never demonstrated the ability to perform full-time work" in the 2 || RFC, the Court disagrees. (Dkt. 12, p. 10.) The ALJ specifically considered Plaintiff's history in 3 contemplation of Plaintiff's RFC. (AR 54 ("[{Plaintiff}] testified he attended up to the 10" grade 4 and does not have a G.E.D. He has not [sic] working in the past 15 years."); AR 57 (statement 5

from Kirsch’s report) (“The claimant reported that he has suffered from lifelong challenges related to previous trauma exposure, erratic behavior, violence toward others, as well as, severe depression and anxiety.”). Plaintiffs further argues that the ALJ should have specified whether Plaintiff required a sit/stand option or a bariatric chair. (Dkt. No. 10, p. 21.) Plaintiff fails to point to evidence in the record—either in his testimony or in the medical evidence—indicating that either option is necessary. See *Dale S. v. Berryhill*, No. 5:17-CV-00863-KES, 2018 WL 4042818, at *4 (C.D. Cal. Aug. 22, 2018) (rejecting argument that RFC should have included sit/stand option where “not a single medical source opined that Plaintiff needed a sit/stand option”). Thus, Plaintiff fails to show legal error.

CONCLUSION

For the foregoing reasons, the Court DENIES Plaintiff's motion and GRANTS the Commissioner’s cross-motion for summary judgment. IT IS SO ORDERED. Dated: August 4, 2025

SALLIE KIM

United States Magistrate Judge