

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
WASHINGTON

Johnny D. v. Frank Bisignano, Commissioner of Social Security

Johnny D. · No. 1:21-CV-03090-LRS · Decided March 30, 2026

SUMMARY

The United States District Court for the Eastern District of Washington reviews the denial of Johnny D.’s application for supplemental security income. The court rejects challenges to the administrative law judge’s evaluation of symptom testimony, medical opinion evidence, and substantial gainful activity, concluding that the decision is supported by substantial evidence and free of reversible legal error. The court denies the plaintiff’s brief, grants the Commissioner’s brief, and affirms the Commissioner’s decision.

CASE DETAILS

COURT	United States District Court for the Eastern District of Washington
WRITING FOR THE COURT	Per curiam; Lonny R. Suko
JURISDICTION	United States District Court for the Eastern District of Washington
DECIDED	March 30, 2026
DOCKET	1:21-CV-03090-LRS
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff sought judicial review under 42 U.S.C. § 405(g) of the Commissioner's final decision denying supplemental security income. After three prior unfavorable administrative decisions and three district-court remands, the Court reviewed the ALJ's fourth unfavorable decision on the administrative record and the parties' briefs.
STANDARD OF REVIEW	Under 42 U.S.C. § 405(g), the court may disturb the Commissioner's decision only if it is unsupported by substantial evidence or based on legal error. The court must consider the record as a whole, may not substitute its judgment for the Commissioner's, and must uphold an ALJ's findings when the evidence is susceptible to more than one rational interpretation. Harmless error does not warrant reversal.
PRECEDENTIAL VALUE	unpublished_or_nonprecedential

PARTIES

Johnny D. v. Frank Bisignano, Commissioner of Social Security

TOPICS

judicial review of agency action

agency adjudication

administrative law

PRACTICE AREAS

Social Security disability

administrative law

judicial review of agency action

QUESTIONS PRESENTED

1. Whether the ALJ provided legally sufficient reasons for evaluating and discounting Plaintiff's subjective symptom testimony.
2. Whether the ALJ properly evaluated the medical opinion evidence.
3. Whether the ALJ committed harmful error in evaluating Plaintiff's substantial gainful activity at step one of the sequential disability analysis.

HOLDINGS

1. The ALJ's evaluation of Plaintiff's subjective symptom testimony was supported by substantial evidence and sufficiently grounded in specific, clear, and convincing reasons, notwithstanding certain erroneous or inadequately supported reasons that were harmless.
2. The ALJ gave legally sufficient, specific, and legitimate reasons supported by substantial evidence for discounting the challenged medical opinions and assessing the residual functional capacity.
3. Any error by the ALJ in determining whether Plaintiff engaged in substantial gainful activity at step one was harmless because the ALJ continued through the sequential evaluation and reached a nondisability determination on the merits.

KEY QUOTATIONS

"the Commissioner's decision will be disturbed "only if it is not supported by substantial evidence or is based on legal error."" (at 4)

"If the evidence in the record "is susceptible to more than one rational interpretation, [the court] must uphold the ALJ's findings if they are supported by inferences reasonably drawn from the record."" (at 4)

"Second, "[i]f the claimant meets the first test and there is no evidence of malingering, the ALJ can only reject the claimant's testimony about the severity of the symptoms if [the ALJ] gives 'specific, clear and convincing reasons' for the rejection."" (at 12)

"Judgment shall be entered for Defendant and the file shall be CLOSED." (at 33)

FACTUAL BACKGROUND

Plaintiff alleged disability from spinal, shoulder, carpal-tunnel, and mental-health impairments, including pain, numbness, anxiety, depression, and difficulty interacting with others. The record showed cervical surgery in 2015, carpal-tunnel surgeries in 2018, intermittent treatment, generally normal or mildly abnormal examination findings, and periods of employment, including full-time work preparing and painting aircraft beginning in 2021. The ALJ found severe physical and mental impairments but determined that Plaintiff retained the residual functional capacity for light work with reaching, postural, environmental, and mental limitations.

PROCEDURAL HISTORY

Plaintiff applied for SSI in 2012, alleging disability beginning October 1, 2010. The ALJ issued unfavorable decisions in 2013, 2018, 2021, and 2023; the first decision was reversed and remanded by Judge Fred Van Sickle in 2016, and the next two matters were remanded by stipulation in 2019 and 2021. After a fourth hearing, the ALJ again denied benefits, finding that Plaintiff could perform jobs existing in significant numbers in the national economy. The district court denied Plaintiff's brief, granted the Commissioner's brief, affirmed the Commissioner's decision, entered judgment for Defendant, and closed the case.

DISPOSITION

affirmed

CASES CITED

- Hill v. Astrue, 698 F.3d 1153 (9th Cir. 2012)
- Edlund v. Massanari, 253 F.3d 1152 (9th Cir. 2001)
- Molina v. Astrue, 674 F.3d 1104 (9th Cir. 2012)
- Shinseki v. Sanders, 556 U.S. 396 (2009)
- Tackett v. Apfel, 180 F.3d 1094 (9th Cir. 1999)
- Beltran v. Astrue, 700 F.3d 386 (9th Cir. 2012)
- Rollins v. Massanari, 261 F.3d 853 (9th Cir. 2001)
- Burch v. Barnhart, 400 F.3d 676 (9th Cir. 2005)
- Carmickle v. Commissioner of Social Security Administration, 533 F.3d 1155 (9th Cir. 2008)
- Morgan v. Commissioner of Social Security Administration, 169 F.3d 595 (9th Cir. 1999)
- Allen v. Heckler, 749 F.2d 577 (9th Cir. 1984)
- Magallanes v. Bowen, 881 F.2d 747 (9th Cir. 1989)
- Ford v. Saul, 950 F.3d 1141 (9th Cir. 2020)
- Tonapetyan v. Halter, 242 F.3d 1144 (9th Cir. 2001)
- Dattilo v. Berryhill, 773 F. App'x 878 (9th Cir. 2019)
- Hasso v. Colvin, 617 F. App'x 780 (9th Cir. 2015)
- Holohan v. Massanari, 246 F.3d 1195 (9th Cir. 2001)
- Bayliss v. Barnhart, 427 F.3d 1211 (9th Cir. 2005)
- Bray v. Commissioner of Social Security Administration, 554 F.3d 1219 (9th Cir. 2009)

- Lester v. Chater, 81 F.3d 821 (9th Cir. 1995)
- Batson v. Commissioner, Social Security Administration, 359 F.3d 1190 (9th Cir. 2004)
- Buck v. Berryhill, 869 F.3d 1040 (9th Cir. 2017)
- Tommasetti v. Astrue, 533 F.3d 1035 (9th Cir. 2008)
- Toni D. v. Saul, No. 3:19-cv-820-SI, 2020 WL 1923161 (D. Or. Apr. 21, 2020)
- Mitchell v. Saul, No. 2:18-cv-01501-GMN-WGC, 2020 WL 1017907 (D. Nev. Feb. 13, 2020)
- Richard F. v. Commissioner of Social Security, No. C19-5220 JCC, 2019 WL 6713375 (W.D. Wash. Dec. 10, 2019)
- Hernandez v. Commissioner of Social Security Administration, No. 1:22-cv-00188-CDB, 2024 WL 3470855 (E.D. Cal. July 18, 2024)
- Bartlett v. Colvin, No. 1:14-cv-00142-SB, 2015 WL 2412457 (D. Or. May 21, 2015)

OPINION

Dickey

PER CURIAM.

1 Mar 30, 2026

2 SEAN F. MCAVOY, CLERK

3 4

5 UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

6

7 JOHNNY D.,1

No: 1:21-CV-03090-LRS

8 Plaintiff,

9 v. ORDER AFFIRMING THE

COMMISSIONER'S DECISION

10 FRANK BISIGNANO,

COMMISSIONER OF SOCIAL

11 SECURITY,

12 Defendant. 13

BEFORE THE COURT are the parties' briefs. ECF Nos. 30, 34. This matter 14 was submitted for consideration without oral argument. Plaintiff is represented by 15 attorney D. James Tree. Defendant is represented by Special Assistant United States 16 Attorney Ryan Lu. The Court, having reviewed the administrative record and the 17 parties' briefing, is fully informed. For the reasons discussed below, Plaintiff's 18 brief, ECF No. 30, is denied and Defendant's brief, ECF No. 34, is granted. 19 20 1 The Court identifies a plaintiff in a Social Security case only by the first 21 name and last initial to protect privacy. See Local Civil Rule 5.2(c).

1 JURISDICTION

2 Plaintiff Johnny D. (Plaintiff), filed for supplemental security income (SSI) on
3 March 27, 2012, alleging disability beginning October 1, 2010. Tr. 229-34.

4 Benefits were denied initially, Tr. 153-61, and upon reconsideration, Tr. 165-73. 5 Plaintiff
appeared at a hearing before an administrative law judge (ALJ) on July 23, 6 2013. Tr. 38-86. In
September 2013, the ALJ issued an unfavorable decision, Tr. 7 13-37, and in March 2015, the
Appeals Council denied review. Tr. 1-4. Plaintiff 8 appealed to the United States District Court for
the Eastern District of Washington 9 and in September 2016, the Honorable Fred Van Sickle issued
an order reversing 10 and remanding the case for further administrative proceedings. Tr. 1209-
1260. 11 A second hearing was held on January 10, 2018. Tr. 1137-70. In July 2018, 12 the ALJ
issued a second unfavorable decision. Tr. 1086-1126. In June 2019, 13 pursuant to the stipulation
of the parties, Judge Van Sickle remanded the case for 14 further proceedings. Tr. 2210-19. 15 A
third hearing was held on February 3, 2021. Tr. 2139-67. In March 2021, 16 the ALJ issued a third
unfavorable decision. Tr. 2111-2138. In November 2021, 17 pursuant to the stipulation of the
parties, the undersigned remanded the case for 18 further proceedings. Tr. 2106-2110. 19 A fourth
hearing occurred on November 15, 2022. Tr. 2054-2100. On March 20 24, 2023, the ALJ issued a
fourth unfavorable decision. Tr. 2018-53. Plaintiff again 21 appealed to this Court for review.

1 BACKGROUND

2 The facts of the case are set forth in the administrative hearing and transcripts, 3 the ALJ's
decision, and the briefs of Plaintiff and the Commissioner, and are 4 therefore only summarized
here. 5 Plaintiff was born in 1970 and was 41 years old at the time of application. Tr. 6 2041. He
dropped out of school in the seventh grade but later earned a GED. Tr. 49, 7 261. He has work
experience as a construction worker and automobile body repairer.

8 Tr. 2041. At the first hearing in 2013, Plaintiff testified that he could not work due to
9 pain in his neck and right shoulder, numbness in his right arm, and difficulty being 10 around
others. Tr. 52, 59-60. He testified that he tends to isolate himself from others.

11 Tr. 72.

12 In 2018, he testified that he started working again in March 2015. Tr. 1141.

13 On April 8, 2015, Plaintiff was injured at work Tr. 1142, 1582. He left that job after 14 three
months because he did not fit in with the guys. Tr. 1150. He had surgery on his 15 neck in 2015.
Tr. 1152. In February 2017, he started a different job at an auto body 16 shop prepping,
vacuuming, and painting cars. Tr. 1148. He would miss work when 17 his back was bothering him.
Tr. 1151. Sometimes his right arm would go numb at 18 work and his boss would move him to a
different project. Tr. 1152. For example, 19 when buffing a hood his shoulder would lock up and
go numb, so he could not 20 finish. Tr. 1152. He no longer felt the need for mental health
treatment as often. Tr. 21 1154. He testified that he stopped using methamphetamine in 2014. He
sometimes 1 would need to lie down during the day due to lower back and left leg pain. Tr. 1160. 2
He had carpal tunnel surgery in April and May of 2018. Tr. 2159. 3 At the fourth hearing in 2022,
Plaintiff testified that his lower back, shoulder, 4 and neck are his most severe impairments due to

pain, stiffness, and mobility issues.

5 Tr. 2061. He has mental challenges including anxiety, nervousness, depression, and
6 wanting to isolate himself. Tr. 2064. His mental health has gotten better over the 7 preceding few
years due to not taking drugs or being in prison. Tr. 2065. He started 8 a new job at Cub Crafters
Group in September 2021 and had been working there 9 painting and prepping small airplanes for
14 months. Tr. 2066. He sometimes 10 missed work due to his back and shoulder problems. Tr.
2071-72. Even though he 11 had carpal tunnel surgery, his right hand still had problems with grip
and slowed him 12 at work. Tr. 2086. He still had problems interacting with others. Tr. 2087. 13
Plaintiff testified he had three L&I claims: a claim in April 2015 for his neck 14 injury; a claim in
August 2015 for carpal tunnel syndrome; and a claim in 2018 for 15 back pain. Tr. 2083-84.

16 STANDARD OF REVIEW

17 A district court's review of a final decision of the Commissioner of Social 18 Security is
governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is 19 limited; the
Commissioner's decision will be disturbed "only if it is not supported by 20 substantial evidence
or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153, 1158 21 (9th Cir. 2012). "Substantial
evidence" means "relevant evidence that a reasonable 1 mind might accept as adequate to support
a conclusion." *Id.* at 1159 (quotation and 2 citation omitted). Stated differently, substantial
evidence equates to "more than a 3 mere scintilla[,] but less than a preponderance." *Id.* (quotation
and citation omitted). 4 In determining whether the standard has been satisfied, a reviewing court
must 5 consider the entire record as a whole rather than searching for supporting evidence in 6
isolation. *Id.* 7 In reviewing a denial of benefits, a district court may not substitute its 8 judgment
for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152, 1156 9 (9th Cir. 2001). If the
evidence in the record "is susceptible to more than one 10 rational interpretation, [the court] must
uphold the ALJ's findings if they are 11 supported by inferences reasonably drawn from the
record." *Molina v. Astrue*, 674 12 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court "may
not reverse an ALJ's 13 decision on account of an error that is harmless." *Id.* An error is harmless
"where it 14 is inconsequential to the [ALJ's] ultimate nondisability determination." *Id.* at 1115 15
(quotation and citation omitted). The party appealing the ALJ's decision generally 16 bears the
burden of establishing that it was harmed. *Shinseki v. Sanders*, 556 U.S. 17 396, 409-10 (2009).

18 FIVE-STEP EVALUATION PROCESS

19 A claimant must satisfy two conditions to be considered "disabled" within the 20 meaning of
the Social Security Act. First, the claimant must be "unable to engage in 21 any substantial gainful
activity by reason of any medically determinable physical or 1 mental impairment which can be
expected to result in death or which has lasted or 2 can be expected to last for a continuous period
of not less than twelve months." 42 3 U.S.C. § 1382c(a)(3)(A). Second, the claimant's impairment
must be "of such 4 severity that he is not only unable to do [his or her] previous work[,] but
cannot, 5 considering [his or her] age, education, and work experience, engage in any other 6 kind
of substantial gainful work which exists in the national economy." 42 U.S.C. § 7 1382c(a)(3)(B). 8

The Commissioner has established a five-step sequential analysis to determine whether a claimant satisfies the above criteria. See 20 C.F.R. § 416.920(a)(4)(i)-(v). At step one, the Commissioner considers the claimant's work activity. 20 C.F.R. § 416.920(a)(4)(i). If the claimant is engaged in "substantial gainful activity," the Commissioner must find that the claimant is not disabled. 20 C.F.R. § 416.920(b). If the claimant is not engaged in substantial gainful activity, the analysis proceeds to step two. At this step, the Commissioner considers the severity of the claimant's impairment. 20 C.F.R. § 416.920(a)(4)(ii). If the claimant suffers from "any impairment or combination of impairments which significantly limits [his or her] physical or mental ability to do basic work activities," the analysis proceeds to step three. 20 C.F.R. § 416.920(c). If the claimant's impairment does not satisfy this severity threshold, however, the Commissioner must find that the claimant is not disabled. 20 C.F.R. § 416.920(c). At step three, the Commissioner compares the claimant's impairment to severe impairments recognized by the Commissioner to be so severe as to preclude a person from engaging in substantial gainful activity. 20 C.F.R. § 416.920(a)(4)(iii). If the impairment is as severe or more severe than one of the enumerated impairments, the Commissioner must find the claimant disabled and award benefits. 20 C.F.R. § 416.920(d). If the severity of the claimant's impairment does not meet or exceed the severity of the enumerated impairments, the Commissioner must pause to assess the claimant's "residual functional capacity." Residual functional capacity (RFC), defined generally as the claimant's ability to perform physical and mental work activities on a sustained basis despite his or her limitations, 20 C.F.R. § 416.945(a)(1), is relevant to both the fourth and fifth steps of the analysis. At step four, the Commissioner considers whether, in view of the claimant's RFC, the claimant is capable of performing work that he or she has performed in the past (past relevant work). 20 C.F.R. § 416.920(a)(4)(iv). If the claimant is capable of performing past relevant work, the Commissioner must find that the claimant is not disabled. 20 C.F.R. § 416.920(f). If the claimant is incapable of performing such work, the analysis proceeds to step five. At step five, the Commissioner should conclude whether, in view of the claimant's RFC, the claimant is capable of performing other work in the national economy. 20 C.F.R. § 416.920(a)(4)(v). In making this determination, the Commissioner must also consider vocational factors such as the claimant's age, education, and past work experience. 20 C.F.R. § 416.920(a)(4)(v). If the claimant is capable of adjusting to other work, the Commissioner must find that the claimant is not disabled. 20 C.F.R. § 416.920(g)(1). If the claimant is not capable of adjusting to other work, analysis concludes with a finding that the claimant is disabled and is therefore entitled to benefits. 20 C.F.R. § 416.920(g)(1). The claimant bears the burden of proof at steps one through four above. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to step five, the burden shifts to the Commissioner to establish that (1) the claimant is capable of performing other work; and (2) such work "exists in significant numbers in the national economy." 20 C.F.R. § 416.960(c)(2); *Beltran v. Astrue*, 700 F.3d 1238, 1239 (9th Cir. 2012).

13 ALJ'S FINDINGS

14 At step one, the ALJ found Plaintiff engaged in substantial gainful activity 15 from January through June 2015, February 2017 through March 2018, and 16 September 13, 2021 through the date of the decision. Tr. 2026. However, there was 17 a continuous 12-month period when Plaintiff did not engage in substantial gainful 18 activity and the ALJ continued the findings for the periods March 27, 2012 through 19 December 2014, July 2015 through January 2017, and April 2018 through 20 September 2021. Tr. 2027.

21 1 At step two, the ALJ found that Plaintiff has the following severe 2 impairments: degenerative disc disease of the cervical, lumbar and thoracic spine; 3 carpal tunnel syndrome; bilateral shoulder degenerative changes; anti-social 4 personality disorder; depressive disorder v. bipolar disorder; anxiety disorder; and 5 polysubstance dependence. Tr. 2027. At step three, the ALJ found that Plaintiff 6 does not have an impairment or combination of impairments that meets or medically 7 equals the severity of a listed impairment. Tr. 2028. 8 The ALJ then found that Plaintiff has the residual functional capacity to 9 perform light work with the following additional limitations: 10 No overhead reaching; frequent reaching at or below shoulder level; frequent handling and fingering; occasional stooping, 11 crouching, and climbing ramps and stairs; no crawling, kneeling, or climbing rope, ladders, and scaffolds; avoid concentrated 12 exposure to extreme cold, vibrations, and hazardous conditions; able to understand, remember, and carry out simple and detailed 13 but not complex instructions and tasks; able to use judgment to make simple and detailed but not complex work-related decisions; 14 and can have frequent contact with the public, co-workers, and supervisors. 15 Tr. 2030. 16 At step four, the ALJ found Plaintiff is unable to perform past relevant work. 17 Tr. 2041. At step five, after considering the testimony of a vocational expert and 18 Plaintiff's age, education, work experience, and residual functional capacity, the 19 ALJ found that there are jobs that exist in significant numbers in the national 20 economy that Plaintiff can perform such as marker, router, and production 21 1 disability as defined in the Social Security Act since March 27, 2012, the date of the 2 application. Tr. 2043.

3 ISSUES

4 Plaintiff seeks judicial review of the Commissioner's final decision denying 5 supplemental security income Title XVI of the Social Security Act. ECF No. 30. 6 Plaintiff raises the following issues for review: 7 1. Whether the ALJ properly evaluated Plaintiff's symptom testimony; 8 2. Whether the ALJ properly considered the medical opinion evidence; and 9 3. Whether the ALJ properly evaluated Plaintiff's substantial gainful activity. 10 ECF No. 30.

DISCUSSION

11

1. Symptom Testimony

12 Plaintiff contends the ALJ failed to properly assess his symptom testimony. 13 An ALJ engages in a two-step analysis to determine whether a claimant's testimony 14 regarding subjective pain or

symptoms is supported. “First, the ALJ must determine 15 whether there is objective medical evidence of an underlying impairment which 16 could reasonably be expected to produce the pain or other symptoms alleged.” 17 *Molina*, 674 F.3d at 1112 (internal quotation marks omitted). Second, “[i]f the 18 claimant meets the first test and there is no evidence of malingering, the ALJ can 19 only reject the claimant’s testimony about the severity of the symptoms if [the ALJ] 20 gives ‘specific, clear and convincing reasons’ for the rejection.” *Ghanim v. Colvin*, 21 1 The ALJ found Plaintiff’s medically determinable impairments could 2 reasonably be expected to cause some of his alleged symptoms, but his statements 3 concerning the intensity, persistence and limiting effects of those symptoms are not 4 entirely consistent with the medical evidence and other evidence in the record. Tr. 5 2031. The ALJ gave multiple reasons to support this finding which are discussed in 6 turn. 7 a. Objective Findings 8 The medical evidence is a relevant factor in determining the severity of a 9 claimant’s pain and its disabling effects. *Rollins v. Massanari*, 261 F.3d 853, 857 10 (9th Cir. 2001). Minimal objective evidence is a factor which may be relied upon in 11 discrediting a claimant’s testimony, although it may not be the only factor. See 12 *Burch v. Barnhart*, 400 F.3d 676, 680 (9th Cir. 2005). It is noted that the ALJ 13 included limitations accounting for each of the impairments discussed below in the 14 RFC by limiting Plaintiff to light work with no overhead reaching, frequent reaching 15 at or below shoulder level, frequent handling and fingering, and other nonexertional 16 and mental limitations. Tr. 2030. Thus, the ALJ concluded that Plaintiff had some 17 limitations from his back, shoulder, hands, or mental health, but found that they are 18 not as severe as alleged. 19 Regarding Plaintiff’s back, the ALJ found: (1) Plaintiff has sought “minimal” 20 treatment; (2) many normal range of motion, strength, and sensation findings; (3) x- 21 rays showed mild degenerative changes; (4) records indicate Plaintiff did well after a 1 cervical discectomy and fusion in September 2015; and (5) February 2021 MRI and 2 notes indicate some worsening lumbar issues, but treatment notes show no changes 3 in function or presentation and Plaintiff was able to work starting in September 4 2021. Tr. 2031-32. 5 Plaintiff takes issue with the ALJ’s characterization of his treatment as 6 “minimal” and cites records documenting spine follow up or treatment. ECF No. 30 7 at 17. Plaintiff is correct that “minimal” is not a fair characterization of Plaintiff’s 8 treatment course, as the record shows he had surgery on his neck, injections, and 9 other treatment at times. However, to the extent the ALJ erred by considering 10 Plaintiff’s treatment in this manner, this does not change the outcome of the ALJ’s 11 overall finding regarding Plaintiff’s symptom statements. See *Carmickle v. Comm’r 12 of Soc. Sec. Admin.*, 533 F.3d 1155, 1162-63 (9th Cir. 2008). 13 Plaintiff asserts the record does not support the ALJ’s conclusions about the 14 medical findings regarding his back and cites records which he says contradict the 15 ALJ’s findings. However, it is the ALJ’s duty to resolve conflicts and ambiguity in 16 the medical and non-medical evidence. See *Morgan v. Comm’r of Soc. Sec. Admin.*, 17 169 F.3d 595, 599-600 (9th Cir. 1999). It is not the role of the court to second-guess 18 the ALJ. *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir. 1984). Even if the evidence 19 could be resolved in Plaintiff’s favor, the court must uphold the ALJ’s decision 20

where the evidence is susceptible to more than one rational interpretation. 21 *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989). Having reviewed the 1 record, the Court concludes the ALJ's findings are based on substantial evidence. 2 Furthermore, the ALJ found that Plaintiff has some limitations and pain due to his 3 back but explained a rational basis for finding them less severe than alleged. 4 Plaintiff contends the ALJ should not have considered his ability to work in 5 evaluating his back impairment because he worked under conditions not consistent 6 with competitive work. However, the regulations provide that employment during a 7 period of claimed disability may show that a claimant is able to do more work than 8 claimed, even if such work is not substantial gainful activity. 20 C.F.R. § 416.971. 9 "An ALJ may consider any work activity, including part-time work, in determining 10 whether a claimant is disabled." *Ford v. Saul*, 950 F.3d 1141, 1156 (9th Cir. 2020). 11 Regarding carpal tunnel syndrome, Plaintiff contends the ALJ incorrectly 12 interpreted the evidence. The ALJ noted that in 2013, Plaintiff reported recent onset 13 of bilateral hand and wrist pain and difficulty gripping objects. Tr. 3827-29. On 14 exam, there was mild swelling but no other abnormalities, and Plaintiff stated that at 15 their worst, his symptoms were "very mild." Tr. 911. In July 2014, there were no 16 negative findings regarding his hands and in April 2015, he had intact grip. Tr. 1570, 17 1681, 2952. EMG testing in July 2015 showed evidence of cervical radiculopathy, 18 but on exam he had normal range of motion so shoulders, elbows, wrists, and fingers 19 bilaterally and intact sensation and strength. Tr. 1850. In March 2016, he had 20 radicular symptoms in his left arm and hand, but testing one month later showed 5/5 21 strength in all upper body parts. Tr. 1748, 1912. 1 Further, the ALJ noted that at a consultative exam in April 2017, Plaintiff did 2 not report any problems with his hands or arms. Tr. 1885. At the time of the exam, 3 Plaintiff's cervical pain was improved and he described only an "intermittent mild 4 tingling sensation on his right thumb and index finger." Tr. 1885. Plaintiff reported 5 "his strength and dexterity are normal." Tr. 1885. At that time, he worked 40 hours 6 per week in an autobody shop and the exam findings included 5/5 grip strength, 7 intact sensation of the hands, and he was able to perform manipulative tasks. Tr. 8 1887-88. The ALJ noted Plaintiff reported intermittent hand numbness and pain 9 which he related to using buffers, grinders, and power tools at his job; on exam, 10 Phalen's test was positive and he was advised to wear wrist splints. He continued to 11 work until undergoing carpal tunnel surgeries in April and May of 2018. 12 Plaintiff asserts the ALJ is incorrect about his reports of no problems during 13 the April 2017 exam because in discussing his cervical pain, it was noted that, 14 "[p]rior to the [2015 cervical] surgery, he was having marked cervical pain with 15 marked right hand and arm radicular pain and weakness." Tr. 1885. This is offset by 16 the essentially normal July 2015 exam findings cited by the ALJ; and, regardless, the 17 reference appears to be to no problems at the time of the 2017 exam. The ALJ also 18 noted that after surgery in 2018, Plaintiff has had few complaints about carpal tunnel 19 symptoms. Tr. 2033. Plaintiff contends this is incorrect, but points to only two 20 records in the first few months after surgery where physical therapy was 21 recommended. Tr. 3394, 3456-57. After physical therapy and doing home exercises, 1 he was

“feeling better overall,” had stopped using his hand braces, and was able to perform his ADLs independently. Tr. 3456. He was found to be making “excellent progress” and was “responding very well” to physical therapy. Tr. 3458. The ALJ’s recitation of the record reasonably supports the ALJ’s conclusion. Regarding Plaintiff’s shoulder, the ALJ noted Plaintiff sought treatment for shoulder pain in February 2013 and July 2014 and indicated his shoulder pain was due to a workplace injury that had occurred 15 years prior. Tr. 2033 (citing Tr. 928- 8 29, 1677-78, 3821-22). A 2013 x-ray revealed absence of the right distal clavicle and mild upward displacement possibly from prior surgery or trauma. Tr. 921. On exam in July 2014, pain and decreased range of motion were described, but muscle strength testing was 5/5 with abduction, internal rotation, external rotation, flexion and extension. Tr. 1681. The ALJ noted Plaintiff continued to report shoulder problems intermittently but observed there are no findings indicating his shoulder problem would prevent him from doing light work with restrictions of no overhead reaching and frequent reaching at or below shoulder level. Tr. 2033. Plaintiff contends the ALJ simply repeated objective findings in support of an RFC which should not count as a clear and convincing reason. ECF No. 30 at 21 (citing Brown- 18 Hunter v. Colvin, 806 F.3d 487, 489 (9th Cir. 2015)). However, in context of the overall assessment of objective evidence and the ALJ’s other reasons, this finding is not based on error. Regarding Plaintiff’s mental health, the ALJ found Plaintiff has sought treatment inconsistently and had generally normal unremarkable mental status exams, typically exhibited normal mood and affect, and regularly denies depression, anxiety, or any significant mental health concerns. Tr. 2033. Plaintiff contends the ALJ referenced no evidence supporting the conclusion that Plaintiff has sought treatment inconsistently and cites records showing periods of regular treatment. As the ALJ did not refer to the record regarding Plaintiff’s mental health treatment, the Court cannot conclude this portion of the ALJ’s finding is supported by substantial evidence. However, the ALJ did cite the record for unremarkable mental status exams with normal attention span and concentration; normal mood and affect, and denials of depression, anxiety, or significant mental health concerns. Tr. 2033. Plaintiff cites other findings and observations in the record where he presented with some negative mental health findings; to the extent the findings are mixed or could be interpreted differently, the Court defers to the ALJ’s interpretation of the evidence. b. Inconsistent Statements and Activities The ALJ found Plaintiff engaged in activities inconsistent with his allegations.

Tr. 2033-34. The ALJ observed Plaintiff testified in 2013 that he goes to an AA meeting every day, spends time with his sponsor engaged in various activities such as going to the movies, and acts as a sponsor for others. He does chores, visits his three-year-old daughter twice a month, and enjoys activities with his fiancé; he enjoys camping and fishing and had gone fishing three weeks before the hearing. At the most recent hearing, he testified that he is the full-time caregiver for his seven- 3 year-old daughter. Plaintiff argues he did not allege any social limitations so the ALJ’s finding is inapplicable; yet the ALJ noted his 2013 testimony that

he has 5 anxiety and difficulty being around others due to his mental health and that he 6 prefers to be alone, and he testified similarly at other hearings. Tr. 52, 72, 2064, 7 2087. Plaintiff also asserts these activities do not show he can perform light work. 8 However, the ALJ found that while these activities may not indicate that Plaintiff 9 can perform full-time work, they show he is capable of interacting with others and 10 performing tasks that require abilities consistent with the RFC. Tr. 2034. This is a 11 reasonable interpretation of the evidence. 12 The ALJ observed that although Plaintiff alleges disability starting in 2012, he 13 told a provider that before he was injured at work in April 2015, he was completely 14 independent with all ADL's and was able to work without pain. Tr. 2034 (citing Tr. 15 1582). Plaintiff takes issue because the medical record cited actually says, "prior to 16 this injury he was completely independent with all ADL's and was able to perform 17 all work related duties without increased pain or restriction." Tr. 1582 (emphasis 18 added). However, the ALJ acknowledged Plaintiff had some pain throughout the 19 record. This does not change to the ALJ's conclusion that Plaintiff was independent 20 with ADL's and performing his work duties at the time. 21 1 The ALJ also observed that Plaintiff stated during the pandemic that he 2 needed to "pull back from work" and he could not find a babysitter for his daughter.

3 Tr. 2034; Tr. 2821. The ALJ observed that while this was understandable, this
4 statement and Plaintiff's receipt of \$40,000 of unemployment benefits indicates his 5 lack of work during the pandemic was likely not due to his impairments. Tr. 2034. 6 Plaintiff argues the ALJ read too much into the statements and that he did not state 7 that lack of childcare was the reason for pulling back from work. Nevertheless, the 8 ALJ's inference from the record is rational. 9 Another inconsistency found by the ALJ is that while Plaintiff reports 10 significant, ongoing, disabling pain, he is routinely described in no acute or apparent 11 distress. Tr. 2035 (citing e.g., Tr. 377, 409, 450, 466, 651, 898, 903, 912, 920, 1735, 12 1757, 1850). Plaintiff counters the ALJ's finding by noting that "no acute distress" is 13 of limited value in evaluating chronic conditions, and that Plaintiff has been in 14 distress on other occasions. ECF No. 30 at 25 (citing e.g., Tr. 925, 2926, 3672, 4010, 15 4097, 5045). The Ninth Circuit has mentioned chart notes indicating a claimant 16 presented in no acute distress as a factor in discounting both medical opinions and a 17 claimant's subjective symptom testimony. See *Rollins*, 261 F.3d at 856; *Dattilo v. Berryhill*, 773 F. App'x 878, 881 (9th Cir. 2010); *Hasso v. Colvin*, 617 F. App'x 780, 781 (9th Cir. 2015); see also *Hernandez v. Comm'r of Soc. Sec. Admin.*, 1:22- 20 cv-00188-CDB, 2024 WL 3470855 (E.D. Ca. July 18, 2024); *Bartlett v. Colvin*, 21 1:14-cv-00142-SB, 2015 WL 2412457, at *2, 8 (D. Or. May 21, 2015). However, 1 some courts have questioned the applicability of the generic chart note of "no acute 2 distress" to chronic conditions. See *Toni D. v. Saul*, No. 3:19-cv-820-SI, 2020 WL 3 1923161, at *6 (D. Or. April 21, 2020) (citing *Mitchell v. Saul*, No. 2:18-cv-01501- 4 GMN-WGC, 2020 WL 1017907, at *7 (D. Nev. Feb. 13, 2020)); *Richard F. v. 5 Comm'r of Soc. Sec.*, No. C19-5220 JCC, 2019 WL 6713375, at *7 (W.D. Wash. 6 Dec. 10, 2019).

7 This is a smaller point in the ALJ's overall finding of inconsistencies in the 8 record. The ALJ did not say Plaintiff never appeared in distress or in pain; in fact, 9 the ALJ cited, for example, an acute episode where Plaintiff appeared presenting 10 uncomfortable and in pain. Tr. 2032 (citing Tr. 1569). Even if there are some 11 findings which differ from those cited by the ALJ, the ALJ's greater point is based 12 on a reasonable interpretation of the record. 13 Exaggeration 14 The ALJ found evidence that Plaintiff exaggerated his psychiatric 15 difficulties. Tr. 2034. An ALJ may reject a claimant's testimony if there is 16 evidence of a tendency to exaggerate symptoms. *Tonapetyan v. Halter*, 242 F.3d 17 1144, 1148 (9th Cir. 2001). The ALJ noted the Personality Assessment Inventory 18 (PAI) administered in June 2012 and March 2013 both suggested Plaintiff was 19 exaggerating his complaints and indicated the test results were considerably 20 distorted and unlikely to reflect his objective clinical status. Tr. 823, 837. And the 21 ALJ observed there are inconsistencies between Plaintiff's self-report on the PHQ- 1 3 depression questionnaires where he gave responses indicating severe depression 2 but then did not present with a depressed mood or affect. Tr. 2034. For the same 3 reasons previously found by this Court, this conclusion is not sufficiently 4 supported by the record and does not rise to the level of a clear and convincing 5 reason. See Tr. 1228-30. Nevertheless, as before, this error is harmless because the 6 ALJ offered other clear and convincing reasons supported by substantial evidence. 7 See *Carmickle*, 533 F.3d at 1162-63. 8 The ALJ also found evidence that Plaintiff exaggerated his physical 9 complaints for disability or workers' compensation evaluations. Tr. 2034. For 10 example, in April 2016, he presented to his back surgeon for exam and findings 11 indicated Plaintiff was pleasant, in no distress, ambulated without gait assistance, 12 and had strength of 5/5 in the lower extremities. Tr. 1739. One week later, at a 13 worker's compensation evaluation, Plaintiff presented dramatically with an 14 antalgic gait, holding his back while walking, grunting and deep breathing 15 throughout the exam, and struggling to get up from a seated position. Tr. 1747, 16 5045. One month later, at a gastroenterology appointment, the general full exam 17 findings were normal, including the cranial nerve assessment. Tr. 1754. 18 Plaintiff contends the first two exams were both L&I exams, so the ALJ's 19 point that he exaggerates for L&I is not valid. He also argues the gastroenterology 20 exam would not normally include findings outside of the specialty. While the 21 ALJ's conclusions are inferential and may not be particularly persuasive, they are 1 not erroneous. And, even if they were, the ALJ has cited other clear and 2 convincing reasons supported by substantial evidence. 3 c. Treatment 4 The ALJ found Plaintiff has not always followed through with treatment 5 recommendations and plans, particularly regarding his workers' compensation 6 claims. Tr. 2035. The ALJ cited one record, a letter from L&I stating that he "had 7 not cooperated with the treatment plan provided by the IME" and his claim was at 8 risk for suspension. Tr. 4570. Yet the letter went on to state that it had "received the 9 requested communication regarding the reasons for not seeking treatment" and that 10 L&I had information "that you are now in compliance with the treatment plan." Tr. 11 4570. The information submitted to L&I in response to the noncompliance letter 12 details that Plaintiff had difficulty accessing

providers to carry out the treatment plan. Tr. 4536. The ALJ must consider possible reasons why the claimant may not comply with treatment or seek treatment consistent with the degree of complaints. Social Security Ruling 16-3p, 2017 WL 5180304, at *9 (effective October 25, 2017). The ALJ failed to consider this evidence explaining the reason for noncompliance or note that Plaintiff was ultimately determined to be in compliance with the L&I treatment plan. This is not a clear and convincing reason supported by substantial evidence. However, this is harmless error as the ALJ provided other clear and convincing reasons supported by substantial evidence. See Carmickle, 533 F.3d at 1162-63. d. Work The ALJ observed that Plaintiff engaged in work activity throughout the 3 period at issue which is inconsistent with disability. Tr. 2035. Plaintiff testified that from 2021 until the date of the decision, he was employed at Cub Crafters Group, prepping and spray-painting aircraft parts full-time. Tr. 2066. Plaintiff stated he has some absences and difficulty with certain tasks, but his employer is understanding.

Tr. 2067, 2071. He has been employed for over a year. Tr. 2066.

Plaintiff argues this is not substantial gainful activity and should not be considered. As noted supra, the regulations provide that employment during a period of claimed disability may show that a claimant is able to do more work than claimed, even if such work is not substantial gainful activity. 20 C.F.R. § 416.971. “An ALJ may consider any work activity, including part-time work, in determining whether a claimant is disabled.” Ford, 950 F.3d at 1156. The ALJ reasonably considered Plaintiff’s work in evaluating his symptoms statements. 2. Medical Opinions Plaintiff contends the ALJ erred in evaluating certain medical opinions regarding Plaintiff’s physical and mental limitations. For claims filed before March 27, 2017, medical opinion evidence is evaluated by considering the three types of physicians: “(1) those who treat the claimant (treating physicians); (2) those who examine but do not treat the claimant (examining physicians); and (3) those who neither examine nor treat the claimant but who review the claimant’s file (nonexamining or reviewing physicians).” *Holohan v. Massanari*, 246 F.3d 1195, 1201-02 (9th Cir. 2001) (brackets omitted). “Generally, a treating physician’s opinion carries more weight than an examining physician’s, and an examining physician’s opinion carries more weight than a reviewing physician’s.” *Id.* “In addition, the regulations give more weight to opinions that are explained than to those that are not, and to the opinions of specialists concerning matters relating to their specialty over that of nonspecialists.” *Id.* (citations omitted).² 8 If a treating or examining physician’s opinion is uncontradicted, an ALJ may reject it only by offering “clear and convincing reasons that are supported by substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005). 11 “However, the ALJ need not accept the opinion of any physician, including a treating physician, if that opinion is brief, conclusory and inadequately supported by clinical findings.” *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228 14 (internal quotation marks and brackets omitted). “If a treating or examining doctor’s opinion is contradicted by another doctor’s opinion, an ALJ may only 16 17 2 For claims filed on or after March 27, 2017, the regulations changed the framework for

evaluation of medical opinion evidence. Revisions to Rules 19 Regarding the Evaluation of Medical Evidence, 2017 WL 168819, 82 Fed. Reg. 20 5844-01 (Jan. 18, 2017); 20 C.F.R. § 416.920c. Plaintiff's claim was filed in

21 January 2016, so the previous method of evaluating medical opinions applies.

1 reject it by providing specific and legitimate reasons that are supported by 2 substantial evidence." Bayliss, 427 F.3d at 1216 (citing *Lester v. Chater*, 81 F.3d 3 821, 830-31 (9th Cir. 1995)). 4 a. Physical 5 The ALJ gave great or significant weight to the opinions of reviewing 6 physicians Alnoor Virji, M.D., Howard Platter, M.D., and James Irwin, M.D., and to 7 examining physician William Drenguis, M.D., who assessed limitations consistent 8 with the RFC finding. Plaintiff contends the ALJ erred by giving little or no weight 9 to other medical opinions containing disabling limitations. Each of the challenged 10 opinions is considered in turn. 11 Caryn Jackson, M.D. 12 In March 2013, Dr. Jackson completed a DSHS Physical Evaluation form and 13 opined that Plaintiff was limited to sedentary work. Tr. 907-08. In July 2013, Dr. 14 Jackson completed a Medical Report form and opined that Plaintiff needs to lie 15 down during the day for one-half to one hour per day to relieve shoulder pain; that 16 work on a regular basis would likely exacerbate his mental disorder and cause 17 worsening pain; he would miss four or more days of work per month due to pain; he 18 could perform sedentary work with occasional handling and never reaching with the 19 right upper extremity. Tr. 978-80. 20 The ALJ found Dr. Jackson's opinions are entitled to little weight because the 21 degree of limitations assessed is: (1) not consistent with normal findings in the 1 record; (2) not supported by her own findings; (3) the shoulder limitations are not 2 consistent with exam findings which consistently indicate normal range of motion 3 and strength; (4) Dr. Jackson relied heavily on Plaintiff's subjective complaints; and 4 (5) Plaintiff has sought minimal treatment for his shoulder complaints; and (6) he 5 acknowledged that medication relieves his pain. Tr. 2036. 6 This Court previously rejected the ALJ's reasoning that Dr. Jackson relied on 7 Plaintiff's subjective complaints for her opinion. Tr. 1239. A physician's opinion 8 may be rejected if it is based on a claimant's subjective complaints which were 9 properly discounted. *Tonapetyan*, 242 F.3d at 1149; *Morgan*, 169 F.3d at 602. 10 However, the ALJ must provide the basis for the conclusion that an opinion was 11 more heavily based on a claimant's self-reports than the medical evidence. *Ghanim*, 12 763 F.3d at 1162. As before, the ALJ here failed to articulate such reasoning, so this 13 was not a specific, legitimate reason for rejecting Dr. Jackson's opinion. 14 Plaintiff contends that records indicate right shoulder and neck range of 15 motion and upper extremity strength limitations which show that Dr. Jackson's 16 assessment is supported. However, as discussed throughout this decision, the ALJ's 17 conclusions regarding the objective findings regarding Plaintiff's shoulder, neck, 18 and back are supported by the record. The ALJ rationally found the degree of 19 limitations assessed by Dr. Jackson is inconsistent with other evidence in the record 20 and this is a specific, legitimate reason to give them little weight. See *Burch*, 400 21 F.3d at 679. With regard to Dr. Jackson's May 2013 treatment note indicating that 1 Plaintiff said medication was helping, Tr. 881, it is not clear

from the record or the 2 ALJ's discussion how this undermines Dr. Jackson's opinion, and this is not a 3 specific, legitimate reason. Nonetheless, the ALJ's reasons overall are specific, 4 legitimate, and supported by substantial evidence. 5 Andrew Hilty, ARNP 6 In March 2016, Mr. Hilty completed a DSHS Physical Functional Evaluation 7 form. Tr. 1862-66. He assessed cervical radiculitis, carpal tunnel syndrome, and 8 lumbar radiculopathy and opined Plaintiff was limited to sedentary work. Tr. 1863- 9 64. He assessed the severity of Plaintiff's cervical radiculitis as severe and opined 10 Plaintiff is unable to sit, lift, carry, handle, push, pull, or reach. Tr. 1863. The ALJ 11 gave Mr. Hilty's opinion little weight because: (1) he did not provide a sufficient 12 explanation for such a significant restriction; and (2) the exam he performed on the 13 day he completed the form did not show more than minimal abnormalities or any 14 clinical observations suggesting the assessed limitations. Tr. 2036. 15 The ALJ reasonably found little explanation for the opinion contained on the 16 form. While Mr. Hilty noted Plaintiff's subjective complaints, his medications, and 17 referenced imaging, there is essentially no explanation for the degree of limitation 18 assessed. Tr. 1862-64. Exam findings for the day of the assessment included muscle 19 tension and tenderness in the bilateral shoulders and cervical area; reduced range of 20 motion of hips and lumbar spine; and note that Plaintiff was unable to sit for more 21 than 5 minutes during the interview and was visibly uncomfortable. Tr. 1807, 1864- 1 65. Plaintiff contends these are not "minimal" findings; regardless of the ALJ's use 2 of the word "minimal," the ALJ's conclusion that these findings do not support the 3 degree of limitations assessed is a rational one. To the extent they could be 4 interpreted differently, the Court defers to the ALJ's conclusion. *Batson v. Comm'r, 5 Soc. Sec. Admin.*, 359 F.3d 1190 (9th Cir. 2004). 6 Stephen Foster, D.O. 7 In July 2014, Dr. Foster completed a DSHS Physical Functional Evaluation 8 form and indicated diagnoses of cervicalgia and right shoulder pain. Tr. 1672-74. He 9 opined the limitations from those conditions caused moderate work-related 10 limitations and limited Plaintiff to sedentary work. Tr. 1673-74. The ALJ gave Dr. 11 Foster's opinion little weight because he did not provide sufficient support for such a 12 restrictive limitation. Tr. 2036. The ALJ noted Dr. Foster documented only mild 13 pain and minimally abnormal findings on exam. The ALJ also found the opinion is 14 not consistent with Plaintiff's return to work in early 2015 or Plaintiff's report that 15 before his workplace injury in April 2015, he did not have any pain or physical 16 limitations. Tr. 2036. And, the ALJ found the opinion is inconsistent with the record 17 as a whole. Tr. 2036. 18 Plaintiff contends the ALJ's finding of mild pain and minimal abnormalities is 19 incorrect. Dr. Foster's musculoskeletal exam from the same day reflects mostly 20 normal findings with mild pain and muscle rigidity of the lower cervical spine, 21 limited range of motion in the cervical spine and shoulder, and pain in the shoulder 1 joint. Muscle strength was 5/5 with abduction, internal rotation, external rotation, 2 and flexion/extension. Tr. 1681. Dr. Foster noted the 2013 right shoulder and neck 3 x-rays showing clavicle displacement due to prior trauma and mild to moderate 4 degenerative changes of the neck. Tr. 1673. There is a range of motion test chart 5 attached to the opinion appears to show slightly reduced range of motion in back 6 extension,

lateral neck bending, neck rotation, and right shoulder flexion. Although 7 Plaintiff disagrees, the ALJ could rationally find that the limitations assessed exceed 8 the findings and Dr. Foster noted mild pain. Furthermore, as discussed throughout 9 this decision, the ALJ reasonably concluded that the record overall is inconsistent 10 with these limitations. 11 Plaintiff contends his return to work in early 2015 does not contradict Dr. 12 Foster's assessment. As noted above, the record indicates that Plaintiff reported, 13 "prior to this [April 2015] injury he was completely independent with all ADL's 14 and was able to perform all work related duties without increased pain or 15 restriction." Tr. 1582. Plaintiff suggests that even if he briefly felt better, the injury 16 itself suggests he was not capable of work. However, Plaintiff has not identified 17 any records between Dr. Foster's July 2014 assessment and the April 2015 injury 18 contradicting the ALJ's conclusion and the Court finds none. See e.g., Tr. 2485- 19 2514, 2515. Even if Plaintiff's return to work could be considered differently, the 20 ALJ's inference from the evidence is supported by the record. 21 1 Mary Pine, PA-C and Thomas McClure, M.D. 2 The ALJ noted the record contains multiple medical opinions related to 3 Plaintiff's workers' compensation claims. Among those medical opinions are 4 various statements and opinions from Thomas McClure, M.D., following Plaintiff's 5 2015 work-related injury, and from Mary Pine, PA-C, following his 2018 work- 6 related injury. These opinions included certain limitations or indicate Plaintiff 7 should be off work, on modified duty, or temporarily totally disabled. Tr. 2840, 8 2918, 2927, 3030, 3682, 3716, 3727, 3895, 3984, 4012, 4026, 4064 (McClure 2015- 9 16); Tr. 4263, 4291, 4352, 4374, 4396, 4593, 4667, 4719, 4778, 4909 (Pine 2018- 10 19). 11 Among these are also the opinions of Maria Armstrong-Murphy, M.D., who 12 examined Plaintiff and assessed limitations on April 27, 2016, consistent with the 13 ability to return to work. Tr. 419. He was found able to return to work on that date.

14 Tr. 4158, 4163. There are also opinions from examiners S. Daniel Seltzer, M.D., 15 and Vorderbet Kamath, M.D., who opined that as of September 6, 2018, Plaintiff 16 could return to work as long as he did not lift more than 20 to 25 pounds and 17 avoided repeated bending and twisting. Tr. 4470-82. 18 The ALJ found little value in the opinions related to worker's compensation 19 claims in terms of determining Plaintiff's RFC since 2012. Tr. 2038. The ALJ 20 found: (1) assessments made in connection with worker's compensation claims 21 concerned a specific injury and evaluation of whether the injury was work-related 1 and when Plaintiff could return to that job; (2) these reports do not consider all of 2 Plaintiff's impairments and do not describe overall functioning; (3) because the ALJ 3 found Plaintiff is unable to perform past work, findings regarding the ability to 4 return to that work are not relevant; (4) any specific assessment does not establish an 5 inability to perform work for at least 12 continuous months because Plaintiff was 6 found able to return to the jobs he was performing in less than 12 months, and those 7 jobs were physically more demanding than the RFC allows. Tr. 2038. 8 Plaintiff picks at each of these reasons and argues the ALJ is incorrect. 9 However, the ALJ's final reason by itself is a specific, legitimate reason supported 10 by substantial evidence for finding the

assessments of Dr. McClure and Ms. Pine of little value. Although Plaintiff argues some of the “off-work” statements and 12 limitations assessed were open-ended, the ALJ observed that Plaintiff was ultimately 13 found to have fewer limitations that allowed him to return to work within 12 months, 14 and those jobs were more demanding than the RFC finding. Tr. 2038. This 15 reasonably offsets any inference of continuing or open-ended disability which could 16 be inferred from Dr. McClure’s or Ms. Pine’s assessments. 17 b. Mental 18 The ALJ gave significant weight to the June 2012 and March 2013 opinions 19 of Aaron Burdge, Ph.D., who examined Plaintiff and opined that he has no mental 20 limitations. Tr. 813-17, 846-53. The ALJ gave partial or little weight to other mental 21 health opinions, some of which are challenged by Plaintiff. 1 John Gilbert, Ph.D. and Leslie Postovoit, Ph.D. 2 In May 2012, Dr. Gilbert reviewed the record and found Plaintiff is able to 3 carry out simple and some complex job tasks at a productive pace with occasional 4 interruption of sustained concentration, persistence, and pace; he could work away 5 from the public and no more than frequent coworker interaction would be best; 6 Plaintiff could accept instructions but would struggle with more harsh criticism; he 7 would do best with routine, more predictable work environments. Tr. 130-31. Dr. 8 Postovoit reviewed the record and assessed the same limitations. Tr. 147-48. The 9 ALJ gave partial weight to the opinions of Dr. Gilbert and Dr. Postovoit, finding 10 they are largely consistent with mental status exams, minimal mental health 11 treatment, with statements that Plaintiff’s mental health had improved, and with his 12 activities. The ALJ determined that the limitation of “occasional” interruption of 13 sustained concentration, persistence, or pace is consistent with “intermittent” or “on 14 occasion” and coincides with Plaintiff’s ability to complete a normal workday and 15 workweek. Tr. 2039. 16 Plaintiff contends the 2016 district court decision found the “occasional” 17 limitation is disabling and it is therefore law of the case. Tr. 2039 (citing Tr. 1236). 18 The Court disagrees. The 2016 district court decision ultimately directed the ALJ to 19 “reconsider the medical opinion evidence” and “reassess the RFC,” Tr. 1250, and 20 there have been two additional district court instructions to review the medical 21 opinions since that time. Additionally, the first ALJ decision, which was the subject 1 of the 2016 district court decision, gave “great weight” to these opinions, while the 2 current decision only accords these opinions only “partial weight.” This is 3 appropriate given that after the 2012 opinions of Drs. Gilbert and Postovoit and after 4 the 2016 district court decision, there has been significant development of the record 5 which impacts the ALJ’s assessment of the record overall. 6 Thomas Genthe, Ph.D. and R.A. Cline, Psy.D. 7 In April 2014, Dr. Genthe completed a DSHS Psychological/Psychiatric 8 Evaluation form. Tr. 1684-89. He diagnosed disruptive mood dysregulation disorder, 9 anxiety disorder, ADHD, and cannabis use disorder in early remission. Tr. 1686. Dr. 10 Genthe assessed severe limitations in four functional areas and marked limitations in 11 eight functional areas. Tr. 1687. 12 In February 2016, Dr. Cline completed a DSHS Psychological/Psychiatric 13 Evaluation and diagnosed antisocial personality disorder. Tr. 1667-71. Dr. Cline 14 opined Plaintiff has mild or moderate limitations in most functional areas, but 15 marked limitations in the ability to communicate and

perform effectively in a work setting and in the ability to maintain appropriate behavior in a work setting. Tr. 17 1670. 18 The ALJ gave little weight to the marked and severe limitations in these 19 opinions for the same reasons: they are inconsistent with mental status exams 20 throughout the record; they are inconsistent with Plaintiff's minimal mental health 21 treatment and his report that his mental health had improved; they are inconsistent 1 with his daily activities, including his ability to work for extended periods of time 2 during which he demonstrated an ability to function to a greater extent than their 3 assessments suggest. Tr. 2040. Plaintiff contends these reasons are not well 4 supported and cites instances in the reports and the record indicating Plaintiff had 5 mental health symptoms. As discussed above, the ALJ did not adequately discuss 6 Plaintiff's minimal mental health treatment with citations to the record. However, 7 the ALJ's explanation regarding the record as a whole, Plaintiff's daily activities, 8 and his ability to work with any mental health impairment is supported by 9 substantial evidence. Therefore, these are specific, legitimate reasons supported by 10 substantial evidence. 11 Christopher Clark, M.Ed., LHMC 12 In August 2011, Mr. Clark completed a DSHS Psychological/Psychiatric 13 Evaluation form and listed diagnoses of bipolar disorder, ADHD, polysubstance 14 abuse in reported remission, and antisocial personality disorder. Tr. 677-81. Mr. 15 Clark assessed marked limitations in the ability to communicate and perform 16 effectively in a work setting with public contact or limited public contact and in the 17 ability to maintain appropriate behavior in a work setting. Tr. 679. Mr. Clark 18 explained that rapid and disorganized speech with thought disorganization would 19 likely interfere with his ability to work, and that he observed Plaintiff to be 20 impulsive and likely to elope without notice. Tr. 679. The ALJ gave Mr. Clark's 21 opinion little weight regarding the marked limitations because the limitations are not 1 consistent with Plaintiff's mental status exams, which show mostly stable mood and 2 intact cognition. Tr. 2038. The ALJ also found that Mr. Clark's opinion is not 3 consistent with Plaintiff's daily activities which, as discussed above, suggest an 4 ability to perform a wide range of tasks and interact with others in a variety of 5 settings. Tr. 2038. The Court disagrees with Plaintiff that the ALJ's findings are 6 "uncited and unexplained." The ALJ gave specific, legitimate reasons for 7 discounting Mr. Clark's opinion. 8 3. Step One – Substantial Gainful Activity 9 Plaintiff contends the ALJ erred at step one in two ways: (1) by finding he 10 earned substantial gainful activity (SGA) January to June 2015; and (2) by failing to 11 consider that work from 2017 to 2018 and 2021 to 2022 was performed under 12 "special conditions." Even if the ALJ erred, the error was harmless because the ALJ 13 continued with the sequential evaluation process. When an ALJ proceeds to the next 14 step of the sequential evaluation process, any error at that step is harmless in the 15 ALJ's ultimate nondisability finding. *Buck v. Berryhill*, 869 F.3d 1040, 1049 (9th Cir. 2017); *Tommasetti v. Astrue*, 533 F.3d 1035, 1042 (9th Cir. 2008). Plaintiff 17 argues the error is harmful because the ALJ continued to refer to past work 18 throughout the decision. However, as discussed above, the ALJ reasonably 19 considered Plaintiff's work efforts, even if they are not substantial gainful activity. 20 Plaintiff's step-one arguments therefore do not

establish harmful error. 21 1 Accordingly, IT IS ORDERED: 2 1. Plaintiff's Brief, ECF No. 30, is DENIED. 3 2. Defendant's Brief, ECF No. 34, is GRANTED. 4 IT IS SO ORDERED. The District Court Executive is directed to enter this 5 || Order and provide copies to counsel. Judgment shall be entered for Defendant and 6|| the file shall be CLOSED. 7 DATED March 30, 2026.) =

LONNY R. SUKO

9 Senior United States District Judge 10 11 12 13 14 15 16 17 18 19 20 21