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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Patrick Dingman,

10 Plaintiff,

11 v.

12 Commissioner of Social Security
13 Administration,

14 Defendant.

No. CV-17-02167-PHX-JZB

ORDER

15
16 Plaintiff Patrick Keith Dingman seeks review under 42 U.S.C. § 405(g) of the final
17 decision of the Commissioner of Social Security (“the Commissioner”), which denied him
18 disability insurance benefits under sections 216(i), 223(d), and 1614(a)(3)(A) of the Social
19 Security Act. Because the decision of the Administrative Law Judge (“ALJ”) is supported
20 by substantial evidence and is not based on legal error, the Commissioner’s decision will
21 be affirmed.

22 **I. Background.**

23 On February 11, 2011, Plaintiff applied for disability insurance benefits and
24 supplemental security income, alleging disability beginning June 1, 2006. On October 3,
25 2012, he appeared with his attorney and testified at a hearing before the ALJ. A vocational
26 expert also testified. At the hearing, Plaintiff’s counsel requested an amended onset date of
27 December 1, 2009. On October 23, 2012, the ALJ issued a decision that Plaintiff was not
28 disabled within the meaning of the Social Security Act. The Appeals Council denied

1 Plaintiff's request for review of the hearing decision, making the ALJ's decision the
2 Commissioner's final decision.

3 **II. Legal Standard.**

4 The district court reviews only those issues raised by the party challenging the ALJ's
5 decision. *See Lewis v. Apfel*, 236 F.3d 503, 517 n.13 (9th Cir. 2001). The court may set
6 aside the Commissioner's disability determination only if the determination is not
7 supported by substantial evidence or is based on legal error. *Orn v. Astrue*, 495 F.3d 625,
8 630 (9th Cir. 2007). Substantial evidence is more than a scintilla, less than a preponderance,
9 and relevant evidence that a reasonable person might accept as adequate to support a
10 conclusion considering the record as a whole. *Id.* In determining whether substantial
11 evidence supports a decision, the court must consider the record as a whole and may not
12 affirm simply by isolating a "specific quantum of supporting evidence." *Id.* As a general
13 rule, "[w]here the evidence is susceptible to more than one rational interpretation, one of
14 which supports the ALJ's decision, the ALJ's conclusion must be upheld." *Thomas v.*
15 *Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002) (citations omitted).

16 Harmless error principles apply in the Social Security Act context. *Molina v. Astrue*,
17 674 F.3d 1104, 1115 (9th Cir. 2012). An error is harmless if there remains substantial
18 evidence supporting the ALJ's decision and the error does not affect the ultimate non-
19 disability determination. *Id.* The claimant usually bears the burden of showing that an error
20 is harmful. *Id.* at 1111.

21 The ALJ is responsible for resolving conflicts in medical testimony, determining
22 credibility, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir.
23 1995). In reviewing the ALJ's reasoning, the court is "not deprived of [its] faculties for
24 drawing specific and legitimate inferences from the ALJ's opinion." *Magallanes v. Bowen*,
25 881 F.2d 747, 755 (9th Cir. 1989).

26 **III. The ALJ's Five-Step Evaluation Process.**

27 To determine whether a claimant is disabled for purposes of the Social Security Act,
28 the ALJ follows a five-step process. 20 C.F.R. § 404.1520(a). The claimant bears the

1 burden of proof on the first four steps, but at step five, the burden shifts to the
2 Commissioner. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999).

3 At the first step, the ALJ determines whether the claimant is engaging in substantial
4 gainful activity. 20 C.F.R. § 404.1520(a)(4)(i). If so, the claimant is not disabled and the
5 inquiry ends. *Id.* At step two, the ALJ determines whether the claimant has a “severe”
6 medically determinable physical or mental impairment. § 404.1520(a)(4)(ii). If not, the
7 claimant is not disabled and the inquiry ends. *Id.* At step three, the ALJ considers whether
8 the claimant’s impairment or combination of impairments meets or medically equals an
9 impairment listed in Appendix 1 to Subpart P of 20 C.F.R. Pt. 404. § 404.1520(a)(4)(iii).
10 If so, the claimant is automatically found to be disabled. *Id.* If not, the ALJ proceeds to step
11 four. At step four, the ALJ assesses the claimant’s residual functional capacity (“RFC”)
12 and determines whether the claimant is still capable of performing past relevant work. §
13 404.1520(a)(4)(iv). If so, the claimant is not disabled and the inquiry ends. *Id.* If not, the
14 ALJ proceeds to the fifth and final step, where he determines whether the claimant can
15 perform any other work based on the claimant’s RFC, age, education, and work experience.
16 § 404.1520(a)(4)(v). If so, the claimant is not disabled. *Id.* If not, the claimant is disabled.
17 *Id.*

18 At step one, the ALJ found that Plaintiff meets the insured status requirements of
19 the Social Security Act through December 31, 2011, and that he has not engaged in
20 substantial gainful activity since June 1, 2006. At step two, the ALJ found that Plaintiff has
21 the following severe impairments: “narcolepsy, sleep apnea, and obesity (20 CFR
22 404.1420(c)).” (AR 407.)

23 At step three, the ALJ determined that, through the date of last insured, Plaintiff did
24 not have an impairment or combination of impairments that meets or medically equals an
25 impairment listed in Appendix 1 to Subpart P of 20 C.F.R. Pt. 404. At step four, the ALJ
26 found that Plaintiff has the RFC to perform:

27 at least light work and some medium exertion jobs as defined in 20 CFR
28 404.1567(c) except the claimant could never climb ladders, ropes or
scaffolds. He must avoid hazards such as moving machinery or unprotected
heights.

1 (AR 408.)

2 The ALJ further found that Plaintiff, through the date of last insured, was unable to
3 perform any of his past relevant work. At step five, the ALJ concluded that, considering
4 Plaintiff's age, education, work experience, and residual functional capacity, through the
5 date last insured, "there were jobs that existed in significant numbers in the national
6 economy that Plaintiff could have performed." (AR 414.)

7 **IV. Analysis.**

8 Plaintiff argues the ALJ's decision is defective for four reasons: (1) "[t]he ALJ erred
9 by omitting/rejecting the medical opinions of Dr. Anderson, treating neurologist/sleep
10 specialist" (doc. 14 at 9-20); (2) the ALJ erred by crediting two non-examining physician
11 opinions with significant weight (*id.* at 20); (3) "[t]he ALJ erred by rejecting [Plaintiff's]
12 symptom testimony" (*id.* at 22-27); and (4) the ALJ erred "by not finding cataplexy and
13 hypersomnia were 'severe'" medical impairments at step two (*id.* at 9 n.5). The Court will
14 address each argument below;

15 **b. Weighing of Medical Source Evidence.**

16 Plaintiff first argues that the ALJ improperly weighed the medical opinions of his
17 treating physician, Dr. Troy Anderson, and examining physicians Drs. Larry Nichols, and
18 Brian Briggs.

19 **1. Legal Standard.**

20 The Ninth Circuit distinguishes between the opinions of treating physicians,
21 examining physicians, and non-examining physicians. *See Lester v. Chater*, 81 F.3d 821,
22 830 (9th Cir. 1995). Generally, an ALJ should give greatest weight to a treating physician's
23 opinion and more weight to the opinion of an examining physician than to one of a non-
24 examining physician. *See Andrews v. Shalala*, 53 F.3d 1035, 1040-41 (9th Cir. 1995); *see*
25 *also* 20 C.F.R. § 404.1527(c)(2)-(6) (listing factors to be considered when evaluating
26 opinion evidence, including length of examining or treating relationship, frequency of
27 examination, consistency with the record, and support from objective evidence). If it is not
28 contradicted by another doctor's opinion, the opinion of a treating or examining physician

1 can be rejected only for “clear and convincing” reasons. *Lester*, 81 F.3d at 830 (citing
2 *Embrey v. Bowen*, 849 F.2d 418, 422 (9th Cir. 1988)). A contradicted opinion of a treating
3 or examining physician “can only be rejected for specific and legitimate reasons that are
4 supported by substantial evidence in the record.” *Lester*, 81 F.3d at 830-31 (citing *Andrews*,
5 53 F.3d at 1043).

6 An ALJ can meet the “specific and legitimate reasons” standard “by setting out a
7 detailed and thorough summary of the facts and conflicting clinical evidence, stating his
8 interpretation thereof, and making findings.” *Cotton v. Bowen*, 799 F.2d 1403, 1408 (9th
9 Cir. 1986). But “[t]he ALJ must do more than offer [her] conclusions. [She] must set forth
10 [her] own interpretations and explain why they, rather than the doctors’, are correct.”
11 *Embrey*, 849 F.2d at 421-22. The Commissioner is responsible for determining whether a
12 claimant meets the statutory definition of disability and does not give significance to a
13 statement by a medical source that the claimant is “disabled” or “unable to work.” 20
14 C.F.R. § 416.927(d).

15 2. Dr. Troy Anderson, M.D.

16 A. Treatment History and Medical Opinions.

17 Dr. Anderson is a neurologist and sleep specialist who treated Plaintiff from 2011
18 through 2016. (AR 238-66, 273-96, 385-93, 301-02, 691-713.) Dr. Anderson rendered
19 eight medical opinions on Plaintiff’s functional limitations during that time frame:

- 20 • In July 2011, Dr. Anderson opined that Plaintiff could not be gainfully employed
21 because of his daytime sleepiness. Dr. Anderson also notes that, at that time,
22 Plaintiff had failed multiple medications for narcolepsy and his daytime sleepiness
23 persisted. (AR 301-02.)
- 24 • In April 2012, Dr. Anderson assessed work limitations from narcolepsy and sleep
25 apnea with four narcoleptic episodes daily, symptoms lasting more than three hours,
26 severe daytime sleepiness, and a total restriction from unprotected heights/moving
27 machinery/driving automotive equipment. Dr. Anderson again noted that
28 medications had failed. (AR 305-06.)

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