

April 29, 2010

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

MARCUS D. SEWARD,

Plaintiff-Appellant,

v.

MICHAEL J. ASTRUE, Commissioner
of the Social Security Administration,

Defendant-Appellee.

No. 09-5140
(D.C. No. 4:08-CV-00464-TCK-PJC)
(N.D. Okla.)

ORDER AND JUDGMENT*

Before **TACHA**, **BALDOCK**, and **BRISCOE**, Circuit Judges.

Marcus D. Seward appeals from a judgment of the district court affirming the Commissioner of the Social Security Administration's denial of his application for disability benefits and supplemental security income benefits. Exercising jurisdiction under 28 U.S.C. § 1291 and 42 U.S.C. § 405(g), we affirm.

* After examining the briefs and appellate record, this panel has determined unanimously to grant the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Mr. Seward claimed disability beginning in June 2004, due to back and neck injuries, depression, and a childhood polio deformity. The Administrative Law Judge (“ALJ”) denied benefits after finding that Mr. Seward: (1) had the severe impairment of degenerative disc disease; (2) his impairment did not meet or equal a listing; (3) he was not entirely credible; and (4) he retained the residual functional capacity (“RFC”) to perform sedentary work. On appeal, Mr. Seward raises the same issues he raised in the district court: (1) the ALJ did not properly evaluate his credibility; (2) the ALJ did not apply the correct legal standards in assessing his RFC; and (3) the ALJ’s RFC determination is not supported by substantial evidence.

We review de novo the district court’s decision to reverse the [Commissioner], applying the same standards as those employed by the district court. Judicial review of the [Commissioner’s] decision is limited to a determination whether [his] factual findings are supported by substantial evidence and whether [he] applied the correct legal standards.

Nguyen v. Shalala, 43 F.3d 1400, 1402 (10th Cir. 1994) (citation omitted). We have reviewed, de novo, the district court’s decision, which adopts the report and recommendation of the magistrate judge to affirm the Commissioner’s denial of benefits. The report and recommendation is thorough, well-reasoned and persuasive on each point argued by Mr. Seward again in this court. We see no reason to repeat the analysis, and we affirm for substantially the same reasons set

for in the report and recommendation dated August 6, 2009, and adopted by the district court in its September 8, 2009 order.

The judgment of the district court is AFFIRMED.

Entered for the Court

Deanell Reece Tacha
Circuit Judge