

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 15 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

LEAH F. ZAPATA,

Plaintiff - Appellant,

v.

MICHAEL J. ASTRUE, Commissioner of
Social Security,

Defendant - Appellee.

No. 09-35199

D.C. No. 2:08-cv-00654-CRD

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Carolyn R. Dimmick, District Judge, Presiding

Submitted December 11, 2009**
Seattle Washington, California

Before: BEEZER, GOULD and TALLMAN, Circuit Judges.

Leah Zapata appeals from the district court's order affirming the decision of the Commissioner of the Social Security Administration, denying Zapata's

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

application for Disability Insurance Benefits and Supplemental Security Income Benefits.

We review de novo a district court's order affirming the Commissioner's decision to deny benefits. *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). We reverse the Commissioner's decision if it is based on legal error or is not supported by substantial evidence. *Id.* We have jurisdiction under 28 U.S.C. § 1291.

We affirm the district court's order. The facts of this case are known to the parties. We do not repeat them.

The Commissioner's decision is supported by substantial evidence in the record and is not based on legal error. No medical evidence in the record is inconsistent with Zapata's residual functioning capacity as determined at her disability hearing. We cannot second guess an ALJ's credibility determination that is supported by substantial evidence in the record. *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (citing *Morgan v. Comm'r of Soc. Sec. Admin.*, 169 F.3d 595, 600 (9th Cir. 1999)). Substantial evidence in the record supports the ALJ's credibility determination.

AFFIRMED.