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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PETER LUMB,

Plaintiff - Appellant,

v.

MICHAEL J. ASTRUE,

Defendant - Appellee.

No. 08-35772

D.C. No. 2:07-cv-00029-SEH-  
RKS

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Montana  
Sam E. Haddon, District Judge, Presiding

Submitted December 18, 2009\*\*  
San Francisco, California

Before: BEEZER, HALL and T.G. NELSON, Circuit Judges.

Peter Lumb appeals the district court's order affirming the Social Security Administration Commissioner's decision denying his application for Disability Insurance Benefits.

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

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

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. The administrative law judge ("ALJ") properly followed the five-step sequential test of 20 C.F.R. § 404.1520.

Lumb's attempt to challenge the ALJ's determination that his mental health impairment is not severe fails because he did not contest it in the district court. See Greger v. Barnhart, 464 F.3d 968, 973 (9th Cir. 2006).

Lumb's impairment does not meet any listing contained in 20 C.F.R. pt. 404, subpt. P, Appx. 1.

No medical evidence in the record is inconsistent with Lumb's residual functioning capacity as determined at his disability hearing, and Lumb presents no additional evidence contradicting the determination that he is capable of performing his past relevant work.

Insofar as Lumb challenges the ALJ's credibility finding, 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 supports the ALJ's credibility determination.

Lumb's remaining contentions lack merit.

**AFFIRMED.**