

FEB 14 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TIMOTHY R. DAVIS,

Plaintiff - Appellant,

v.

MICHAEL J. ASTRUE,\* Commissioner  
Social Security Administration,

Defendant - Appellee.

No. 05-36207

D.C. No. CV-04-06260-MWM

MEMORANDUM\*\*

Appeal from the United States District Court  
for the District of Oregon  
Michael W. Mosman, District Judge, Presiding

Argued and Submitted February 4, 2008  
Portland, Oregon

Before: RYMER, T.G. NELSON, and PAEZ, Circuit Judges.

Timothy Davis appeals the district court's judgment affirming the  
Commissioner of Social Security's denial of Davis' application for social security

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\* Michael J. Astrue, who was sworn in as Commissioner of the Social Security Administration on February 12, 2007, is substituted as the defendant-appellee pursuant to Fed. R. App. P. 43(c)(1).

\*\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

disability benefits under Title II of the Social Security Act. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review the district court's judgment de novo. *Schneider v. Comm'r of Soc. Sec. Admin.*, 223 F.3d 968, 973 (9th Cir. 2000). We must affirm the Commissioner's denial of benefits if the Administrative Law Judge's ("ALJ") findings are supported by substantial evidence and not based on legal error. *See id.* We affirm.

The ALJ's findings are supported by substantial evidence. The ALJ articulated a clear and convincing reason for rejecting Davis' symptom testimony by explaining that although Davis testified to incapacitating symptoms, he did not seek treatment for those symptoms. *See Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989) (finding it appropriate to consider "an unexplained, or inadequately explained, failure to seek treatment" in discrediting pain testimony).

The ALJ also provided specific, legitimate reasons for rejecting Dr. Curtin's controverted opinion that Davis could not sustain light work. *See Tonapetyan v. Halter*, 242 F.3d 1144, 1148-49 (9th Cir. 2001). The ALJ explained that (1) Dr. Curtin's opinions varied over time, despite an essentially static medical situation; (2) the medical record showed that Davis recovered from congestive heart failure in 2000, and there was no evidence of a relapse; and (3) Davis' other impairments would not significantly worsen his functional abilities.

AFFIRMED.