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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| <p>MARTY A. BOSCH,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>MICHAEL J. ASTRUE,** Commissioner of Social Security Administration,</p> <p>Defendant - Appellee.</p> |
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No. 06-35633

D.C. No. CV-05-00043-BU-SEH

MEMORANDUM*

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

Submitted December 6, 2007***
Seattle, Washington

Before: McKEOWN and CLIFTON, Circuit Judges, and SCHWARZER****,
District Judge.

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

** Michael J. Astrue is substituted for his predecessor Jo Anne Barnhart as Commissioner of the Social Security Administration. Fed. R. App. P. 43(c)(2).

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

**** The Honorable William W Schwarzer, Senior United States District Judge for the Northern District of California, sitting by designation.

Marty A. Bosch appeals the district court's order affirming the Administrative Law Judge's ("ALJ") finding of non-disability and subsequent denial of social security disability benefits under the Social Security Act, 42 U.S.C. § 1382c.

We may set aside the denial of benefits only if the ALJ's decision is not supported by substantial evidence or is based on legal error. See *Flaten v. Sec'y of Health & Human Servs.*, 44 F.3d 1453, 1457 (9th Cir. 1995). Bosch argues the ALJ's decision ignored medical records reflecting the level of Bosch's pain and physical restrictions. He further argues the ALJ improperly disregarded a treating physician's opinion as based solely on subjective complaints.

The ALJ applied the five-factor test required for a finding of non-disability under the Act, *Corrao v. Shalala*, 20 F.3d 943, 946 (9th Cir. 1994), and found that though Bosch cannot return to his previous job, he can engage in gainful sedentary work that exists in the national economy. The ALJ considered both Bosch's subjective complaints of pain and his medical history. Contrary to Bosch's assertion, the ALJ neither ignored nor improperly disregarded his doctors' assessments, and the finding was supported by substantial evidence.

AFFIRMED.