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United States Court of Appeals For the First Circuit

No. 04-1245

DANNIE LARCK,
Plaintiff, Appellant,
v.

JOANNE B. BARNHART, COMMISSIONER OF SOCIAL SECURITY,
Defendant, Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

[Hon. John A. Woodcock, Jr., U.S. District Judge]

Before

Boudin, Chief Judge,
Torruella and Lynch, Circuit Judges,

Francis M. Jackson and Jackson & MacNichol, on brief for
appellant.

Paula Silsby, United States Attorney, Robert J. Triba,
Regional Chief Counsel, Social Security Administration, and
Eskunder R.T. Boyd, Special Assistant to the U.S. Attorney, Social
Security Administration, on brief for appellee.

October 14, 2004

Per Curiam. Claimant Dannie Larck appeals from a decision of the district court upholding the Commissioner's denial of disability and disability insurance benefits under the Social Security Act. After carefully reviewing the briefs and record below, we affirm the Commissioner's decision, essentially for the reasons set out in the Magistrate Judge's October 31, 2003, Report and Recommendation. We add only that, contrary to claimant's contention, neither Dr. Graf's opinion that claimant's impairment was equivalent to a listed impairment, see 20 C.F.R. Part 404, Subpart P, Appendix 1, nor Dr. Holzaepfel's finding that claimant could lift no more than ten pounds are entitled to controlling weight. Both of the cited conclusions are plainly inconsistent with or unsupported by contemporaneous findings made by the same and other physicians. Cf. Prince v. Bowen, 894 F.2d 283, 285-86 (8th Cir. 1990). The Commissioner's findings are supported by substantial evidence.

In light of our conclusion, we find it unnecessary to address the Commissioner's contention that claimant's amendment of the alleged onset date limited the period under review to a single day. We also decline to address claimant's arguments concerning the appropriate weight to afford disability determinations of other agencies, as this argument was not presented to the district court.

Affirmed. See 1st Cir. R. 27(c).