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# United States Court of Appeals For the First Circuit

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No. 04-1707

WILBERT W. KELLY,  
Plaintiff, Appellant,  
v.

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

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

[Hon. D. Brock Hornby, U.S. District Judge]

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Before  
Selya, Lynch and Howard,  
Circuit Judges.

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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 Boyd, Special Assistant to the U.S. Attorney on brief for appellee.

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March 22, 2005

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**Per Curiam.** After carefully considering the briefs and record on appeal, we affirm for substantially the reasons stated in the magistrate's report and adopted by the district court. Among other problems, the appellant made no showing of documented, severe mental impairment. Substantial evidence supported the determination that his mental capacity was not significantly limited. Rodriguez v. Sec'y of Health & Human Servs., 647 F.2d 218 (1<sup>st</sup> Cir. 1981). He also made no showing that the record cast doubt on his ability to perform light work. An ALJ may render "common-sense judgments about functional capacity." Gordils v. Sec'y of Health & Human Serv., 921 F.2d 327, 329 (1<sup>st</sup> Cir. 1990).

Finally, the appellant failed to preserve the issue of the ALJ's duty to develop the record. Passing allusion to the issue does not suffice. Keating v. Sec'y of Health & Human Serv., 848 F.2d 271 (1<sup>st</sup> Cir. 1988).

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