

FILED

December 23, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-50359
Summary Calendar

SIMON MARTINEZ,

Plaintiff-Appellant,

versus

JO ANNE B. BARNHART, COMMISSIONER OF SOCIAL SECURITY,

Defendant-Appellee.

Appeal from the United States District Court for
the Western District of Texas
(USDC No. 1:02-CV-584-SS)

Before REAVLEY, WIENER, BENAVIDES, Circuit Judges.

PER CURIAM:*

The ALJ's decision was supported by substantial evidence, and the ALJ used the proper legal standards to evaluate the evidence. See Brown v. Apfel, 192 F.3d 492, 496 (5th Cir. 1999). The objective medical evidence supports the ALJ's determination that

*Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Martinez is capable of performing light work. Further, Martinez's condition does not wax and wane to the extent that a separate capable-of-maintaining-employment finding was necessary in this case. See Frank v. Barnhart, 326 F.3d 618 (5th Cir. 2003).

AFFIRMED.