**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE FIFTH CIRCUIT**

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**No. 93-3321**
**Summary Calendar**

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**THOMAS R. SEAL,**

**Plaintiff-Appellant,**

**v.**

**DEPARTMENT OF HEALTH & HUMAN SERVICES,**
**Donna E. Shalala, Secretary of,**

**Defendant-Appellee.**

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Appeal from the United States District Court
for the Eastern District of Louisiana
(91 CV 3322 G)

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(April 28, 1994)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:*

Thomas R. Seal appeals from the denial of Social Security disability insurance benefits. Because the Secretary's decision was supported by substantial evidence in the record, we affirm.

Seal's legally compensable period of disability commenced September 1 and ended December 31, 1989, while he was under the care of a doctor for back problems allegedly inflicted in an accident at work. The significant dispute in the case is whether

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* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Seal was disabled, i.e. unable to work, according to the Social Security Act during this period. We may reverse only if the Secretary's denial of disability benefits was not supported by substantial evidence or did not follow relevant legal standards. Villa v. Sullivan, 895 F.2d 1019, 1021 (5th Cir. 1990).

Seal argues only that the ALJ's decision was not based on substantial evidence because it disagreed with the opinion of Cindy Harris, a vocational counselor, and did not reflect the medical opinion of Dr. Whitecloud, which was added to the record in this court. Neither of these arguments is persuasive.

As noted by the ALJ, substantial medical evidence demonstrates that Seal was not disabled during the relevant period. Progress reports indicate that, from March to September 1989, Seal was encouraged to continue in progressive rehabilitative exercises and conservative treatment. In April, Seal reported that he was "no longer taking pain medication." Although Dr. Gutinsky noted in July 1989 that Seal complained of pain no matter what he did, Dr. Gutinsky indicated that Seal demonstrated no weakness or atrophy and could perform work with certain lifting and bending restrictions. This comported with Dr. King's recommendation in September that Seal be rehabilitated into a sedentary job. Seal's "excellent exercise performance" on the treadmill in November further demonstrated his ability to engage in physical activity. Dr. Smith noted that the treadmill test was terminated after 10.5 minutes because of "fatigue," with no mention of pain.

Dr. Whitecloud's deposition and letter evidence are not material to the ALJ's decision. The deposition and letter indicate that Dr. Whitecloud first examined Seal in March 1991, several months before the Secretary's decision in August, and that, in February 1992, Seal received "anterior and posterior cervical fusion and disc excision at L3 to S1." That an operation was performed over a year after the evidentiary hearing and six months after the Secretary's decision is not a sufficient basis to disturb the determination that Seal was not disabled during the relevant period. See Harrell, 862 F.2d at 481; Bradley, 809 F.2d at 1058. Although Dr. Whitecloud's deposition and letter support the ALJ's conclusion that Seal's condition worsened after December 31, 1989, Whitecloud's conclusional statement that "Mr. Seal has been unable to work since September of 1988," does not show that the Secretary's determination lacks support by substantial medical evidence. Nor do complaints that may become a basis for disability at a later time show a lack of "substantial evidence" for purposes of a disability determination for an earlier 12-month period. See Cook v. Califano, 569 F.2d 1328, 1329-30 (5th Cir. 1978).

Additionally, Cindy Harris, a vocational expert, examined Seal's work history and testified that, based on a strict reading of a work capacities evaluation performed by physical therapist M.A. Belcher, Seal was able to do unskilled sedentary work within the limitations determined by Belcher and that substantial jobs accommodating those limitations existed in the national economy. Harris cautioned, however, that Belcher concluded that Seal

experienced "severe pain" when performing the tasks. Although Seal seems to attach some importance to Harris's cautionary statement, the ALJ found that, "by the terms of the report itself, it is clear that Mr. Belcher, in rendering this assessment, was merely granting complete credence to claimant's complaints of pain." Because the ALJ's finding that Seal exaggerated his pain, at least during the insured period, is supported by substantial evidence, the ALJ could rely on Harris's conclusions based on a strict reading of Belcher's task evaluation without regard to Seal's subjective complaints of pain.

The ALJ concluded that, although the range of activity was restricted, Seal had a residual functional capacity to do light sedentary work and was therefore not disabled as defined by the Act. See 20 C.F.R. § 404.1569 & subpt. P, app. 2.

Seal has failed to carry his burden on appeal. the decision of the Secretary, approved by the district court is **AFFIRMED**.