

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

JUN 22 1990

ROBERT L. HOECKER
Clerk

CHARLES W. TUCKER,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	No. 89-3322
	)	(D.C. No. 88-1371)
	)	(District of Kansas)
LOUIS W. SULLIVAN, M. D.	)	
	)	
Defendant-Appellee.	)	

ORDER AND JUDGMENT*

Before ANDERSON, BALDOCK and EBEL, Circuit Judges

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The cause is therefore ordered submitted without oral argument.

Charles W. Tucker appeals an order of the federal district court affirming the decision of the Secretary of Health and Human Services that Tucker was not entitled to disability benefits under Title II of the Social Security Act, 42 U.S.C. § 401 et seq. For reasons that are substantially the same as those set forth in

*This order and judgment has no precedential value and shall not be cited, or used by any court within the Tenth Circuit, except for purposes of establishing the doctrines of the law of the case, res judicata, or collateral estoppel. 10th Cir. R. 36.3.

the decision of the Administrative Law Judge ("ALJ") and the district court, we affirm. We emphasize that the claimant's testimony of the existence of a severe disability as of September 1, 1984 must be supported by medical evidence and that it is within the authority of the ALJ to reject the conclusory opinion of Dr. Allen McLain on this point when Dr. McLain did not examine the client until 1986 and was only speculating as to the extent of Tucker's medical problems two years earlier. See Bernal v. Bowen, 851 F.2d 197 (10th Cir. 1988) (citing Frey v. Bowen, 816 F.2d 508, 513 (10th Cir. 1987)).

AFFIRMED. The mandate shall issue forthwith.

ENTERED FOR THE COURT

Stephen H. Anderson
Circuit Judge