

IN THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF KANSAS

DEBORAH LANDWEHR,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 08-1154-WEB
	)	
MICHAEL J. ASTRUE,	)	
Commissioner of	)	
Social Security,	)	
	)	
Defendant.	)	

ORDER

This is an action reviewing the final decision of the Commissioner of Social Security denying the plaintiff disability insurance benefits. The matter was referred to Magistrate Judge Bostwick for a recommendation and report pursuant to Rule 72(b), Federal Rules of Civil Procedure. The Recommendation and Report was filed on March 27, 2009. Neither party has filed objections to the Recommendation and Report.

I. History

On May 23, 2003, the administrative law judge (ALJ), issued an opinion finding that plaintiff was not disabled because she could return to past relevant work. On September 9, 2005, the Appeals Council vacated the decision of the ALJ and remanded the case for further hearing. On August 28, 2007, the ALJ issued his opinion finding the plaintiff was not disabled.

The magistrate judge found the ALJ did not err in his credibility analysis, and did not err in disregarding the opinion of the treating physician. Magistrate Judge Bostwick recommended the decision of the ALJ be affirmed.

## II. Standard of Review

The district court reviews the magistrate's report under a de novo standard of review. Fed.R.Civ.P. Rule 72(b), 28 U.S.C. § 636(b)(1). The court has considerable discretion in choosing what reliance to place on the magistrate's findings and recommendations. The district court can follow or ignore the magistrate's recommendation, but it should make an independent determination of the issues. *Andrews v. Deland*, 943 F.2d 1162, 1170 (10th Cir. 1991). A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. 636(b)(1).

We review the Commissioner's decision to determine whether the factual findings are supported by substantial evidence in the record and whether the correct legal standards were applied. *Hackett v. Barnhart*, 395 F.3d 1168, 1172 (10th Cir. 2005). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Id.* It requires more than a scintilla, but less than a preponderance. *Zoltanski v. F.A.A.*, 372 F.3d 1195, 1200 (10th Cir. 2004).

## III. Discussion

The ALJ found the plaintiff's testimony regarding pain was not credible. Findings by the ALJ as to credibility should be affirmatively linked to substantial evidence. *Kepler v. Chater*, 68 F.3d 387, 391 (10th Cir. 1995). The ALJ need only set forth specific evidence upon which he relied. *White v. Barnhart*, 287 F.3d 903, 909 (10th Cir. 2001). The ALJ detailed the medical evidence, and discussed plaintiff's credibility and allegations of pain in detail. He also set forth the specific evidence he relied on in evaluating the claimant's credibility. The ALJ did not err in the credibility analysis of the plaintiff.

The ALJ disregarded the opinion of Dr. Lies, a treating physician. Generally, treating physician opinions are given more weight over the opinions of other physicians. *Robinson v. Barnhart*, 366 F.3d 1078, 1082 (10th Cir. 2004). If a treating physician opinion is not given controlling weight, the opinion must still be weighted using the factors set forth in 20 C.F.R. §§ 404.1527 and 416.927. *Watkins v. Barnhart*, 350 F.3d 1297, 1300 (10th Cir. 2003). The ALJ must provide a sufficient explanation for rejecting the opinion of the treating physician. *Robinson*, 366 F.3d at 1084. The ALJ adopted the opinion of a non-treating physician. He provided substantial evidence in the record to support his findings, providing a legally sufficient explanation. The ALJ did not err in the weight he assigned to the medical opinions.

IV. Conclusion

IT IS ORDERED that the Recommendation and Report of Magistrate Judge Bostwick (Doc. 15) be adopted by this Court; and

IT IS FURTHER ORDERED that the decision of the Commissioner be AFFIRMED.

SO ORDERED this 14th day of May, 2009.

          s /Wesley E. Brown  
Wesley E. Brown  
U.S. Senior District Judge