

IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF KANSAS

MARGARET GOMEZ,)
)
Plaintiff,)
)
v.) Case No. 08-1227-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 April 16, 2009. Neither party has filed objections to the Recommendation and Report.

I. History

On January 18, 2008, the administrative law judge (ALJ) issued his decision finding the plaintiff was not disabled. Magistrate Judge Bostwick issued a Report and Recommendation finding the RFC findings of the ALJ were supported by substantial evidence. The magistrate judge 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 had the residual functional capacity to perform light work. "The RFC assessment must include a narrative discussion describing how the evidence supports each conclusion, citing specific medical facts and nonmedical evidence." SSR 96-8P, 1996 WL 374184. The ALJ considered the medical opinions, RFC assessments, and the plaintiff's testimony in making the RFC assessment. He cited to specific substantial evidence to support his decision. The ALJ did not err in his RFC assessment.

IV. Conclusion

IT IS ORDERED that the Recommendation and Report of Magistrate Judge Bostwick (Doc. 14) 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