

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

KERMIT L. NEFF,

Plaintiff,

v.

**CIVIL ACTION NO. 2:04cv32
(Maxwell)**

**JO ANNE B. BARNHART,
COMMISSIONER, SOCIAL
SECURITY ADMINISTRATION,**

Defendant.

ORDER

On November 22, 2004, the Court referred this Social Security action to United States Magistrate Judge James E. Seibert, pursuant to 28 U.S.C. § 636(b)(1)(B), Rule 72(b) of the Federal Rules of Civil Procedure and Local Rule 4.01(d), with directions to consider the same and to submit to the Court proposed findings of fact and a recommendation for disposition. On June 22, 2005, Magistrate Judge Seibert filed his Report and Recommendation wherein the parties were directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Report and Recommendation. Plaintiff filed his Objections to the Report and Recommendation of United States Magistrate Judge Seibert on June 30, 2005, and on July 11, 2005, Defendant's Response To "Plaintiff's Objections To Report and Recommendation/Opinion" was filed.

Upon examination of the report from the Magistrate Judge, it appears to the Court that the issues raised in the cross motions for summary judgment were thoroughly considered by Magistrate Judge Seibert in his Report and Recommendation. The Court, upon an independent de novo consideration of all matters now before it, is of the opinion that the proposed Report and Recommendation accurately reflects the law applicable to the

facts and circumstances before the Court in this action. Moreover, the Plaintiff's objections have not raised any issues that were not thoroughly considered by the Magistrate Judge in his Report and Recommendation. Therefore, it is

ORDERED that Magistrate Judge Seibert's proposed Report and Recommendation be, and hereby is, accepted in whole and that this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly,

1. The Defendant's Motion for Summary Judgment is **GRANTED**;
2. The Plaintiff's Motion for Summary Judgment is **DENIED**;
3. The decision for the Defendant is **AFFIRMED**; and
4. This civil action is **DISMISSED** and **RETIRED** from the docket of this Court.

The Clerk of Court is directed to enter a separate judgment order and to send a copy of this Order to all counsel of record.

ENTER: August 8th, 2005

/s/ Robert E. Maxwell
United States District Judge