

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

RICKY R. McCOURT,

Plaintiff,

v.

Civil Action No. 2:05-CV-45

MICHAEL J. ASTRUE,¹
COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

FILED

AUG 30 2007

U.S. DISTRICT COURT
ELKINS WV 26241

ORDER

On October 26, 2005, 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 7.02(c) with directions to consider the same and to submit to the Court proposed findings of fact and a recommendation for disposition. On May 2, 2006, Magistrate Judge Seibert filed his Proposed Findings of Fact and Recommendation for Disposition 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 Proposed Findings of Fact and Recommendation for Disposition.

On May 11, 2006, the Plaintiff filed Objections to the Report and Recommendation of Magistrate Judge. On July 13, 2007, Plaintiff filed a Motion to Remand and Brief in Support of

¹ On February 12, 2007, Michael J. Astrue became the Commissioner of Social Security. Pursuant to Rule 25(d)(1) of the Federal Rules of Civil Procedure, Michael J. Astrue should be substituted, therefore, for former Commissioner Jo Anne B. Barnhart, (or Acting Commissioner Linda L. McMahon [if the caption was changed previously]) as the defendant in this suit. No further action need be taken to continue this suit by reason of the last sentence of section 205(g) of the Social Security Act, 42 U.S.C. § 405(g).

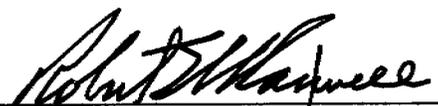
Remand. On July 23, 2007, Defendant filed Objections to Plaintiff's Motion to Remand.

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 Proposed Findings of Fact and Recommendation for Disposition. Moreover, the Court, in consideration of all matters now before it, is of the opinion that the Proposed Findings of Fact and Recommendation for Disposition accurately reflects the law applicable to the facts and circumstances before the Court in this action. Therefore, it is

ORDERED that Magistrate Judge Seibert's Proposed Findings of Fact and Recommendation for Disposition 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 Plaintiff's Motion for Remand is **DENIED**;
3. The decision of the Defendant is **AFFIRMED**; and
4. This civil action is **DISMISSED** and **RETIRED** from the docket of this Court.

ENTER: August 30, 2007


UNITED STATES DISTRICT JUDGE