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

THOMAS RICHARDS,

Plaintiff,

v. **CIVIL ACTION NO. 3:05CV84**

JO ANNE BARNHART,
Commissioner of Social Security,

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day the above styled case came before the Court for consideration of the Report and Recommendation of Magistrate Judge James E. Seibert, filed on August 23, 2006, and the Plaintiff's objections thereto filed on September 5, 2006. In the interests of justice and in accordance with 28 U.S.C. §636(b)(1), the Court has conducted a *de novo* review.

The Court, after reviewing the above, is of the opinion that the Magistrate Judge's Report and Recommendation should be and is hereby **ORDERED** adopted.

Plaintiff's objections to the Report and Recommendation essentially restate his underlying claim. Specifically, the Plaintiff raises two objection to the Report and Recommendation.

The Plaintiff's first argument is that both the Administrative

Law Judge (ALJ) and Magistrate Judge Seibert failed to give proper weight to the opinion of the Claimant's treating physician. Dr. Lloyd Kurth's opinion is that, "Mr. Richards has radicular pain in his right leg even after surgery and that the nature and severity of his symptoms were credible and consistent with the objective medical findings." Document No. 14, page 1.

The Plaintiff's second objection is that Magistrate Judge Seibert's should not have found that the ALJ gave sufficient weight to the treating physician's diagnosis, despite the ALJ's adoption of that opinion.

With respect to the first objection, this Court agrees with the Magistrate Judge's conclusion that the ALJ gave great weight to the treating physician's diagnosis by adopting that opinion. The letter from Dr. Kurth to Plaintiff's counsel sets forth the treating physician's opinion. Dr. Kurth wrote that the Claimant suffers from 1) lumbar disc disease, 2) low back pain, 3) multiple disc problems, and 4) radicular pain in his right leg. Administrative Transctript, page 313. Review of the ALJ's, "Evaluation of the Evidence," cited by the Magistrate Judge (Administrative Transcript, pages 16-18) clearly indicates that the ALJ acknowledged and adopted the substance of the treating physician's opinion.

The ALJ then made well supported findings applying the law to

resolve conflicts in the evidence. Namely, the ALJ found that the Claimant's activities indicated he was not disabled, despite severe impairments from pain and back problems (Id. at 16, 18). See Hays v. Sullivan, 907 F.2d 1453, 1456 (4th Cir. 1990).

The Plaintiff's second objection is that Magistrate Judge Seibert's review of the record and determination that the ALJ gave proper weight to Dr. Kurth's opinion is in error. The Plaintiff argues that the ALJ's failure to mention Dr. Kurth's name and explicitly state what weight was given to the treating physician's opinion constitutes an insufficient consideration otht eh treating physician's opinion, under the law.

Upon review of the second objection, the Court finds that the ALJ's adoption of the substance of Dr. Kurth's opinion set out on page 313 of the Administrative Record and subsequent weighing of evidence on page 18 of the Administrative Record does clearly shows the weight afforded the treating doctor's opinion. The ALJ adopts the substance of Dr. Kurth's opinion and makes explicit, well reasoned explanation of his subsequent findings on disability.

Therefore, for the reasons stated herein and for those set forth in the Magistrate's Report and Recommendation, the Plaintiff's Motion for Summary Judgment (Document No. 11) is **DENIED**.

ORDER ADOPTING REPORT AND RECOMMENDATION

Defendant's Motion for Summary Judgment (Document No. 12) is **GRANTED**. It is further **ORDERED** that this action be **DISMISSED WITH PREJUDICE** based on the reasons set forth in the Magistrate Judge's Report and Recommendation, and **STRICKEN** from the active docket of this Court.

It is so **ORDERED**.

The Clerk is directed to transmit true copies of this Order to the all counsel of record.

DATED this 19th day of January 2007.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE