

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

ROBERT R. MOORE,

Plaintiff,

v.

**Civil Action No. 3:07-CV-2
(Judge Bailey)**

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above styled matter came before the Court for consideration of the Report and Recommendation (“R&R”) of United States Magistrate Judge John S. Kaull [Doc. No. 17] dated November 26, 2007, and the plaintiff’s corresponding Objections [Doc. No. 20] filed on December 21, 2007. Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court is required to make a *de novo* review of those portions of the Magistrate Judge’s findings to which objection is made. However, failure to file objections to the Magistrate Judge’s proposed finding and recommendation permits the district court to review the recommendation under the standards that the district court believes are appropriate, and under these circumstances, the parties’ right to *de novo* review is waived. See **Webb v. Califano**, 468 F. Supp. 825 (E.D. Cal. 1979). Accordingly, this Court will conduct a *de novo* review only as to the portions of the Report and Recommendation to which the plaintiff objected. The remaining portions of the Report and Recommendation will be reviewed for clear error. As a result, it is the opinion of the Court that the **Magistrate Judge’s Report and Recommendation [Doc. No. 17]** should be, and is, **ORDERED ADOPTED.**

On January 3, 2007, the plaintiff, Robert R. Moore, filed his Complaint [Doc. No. 1] seeking judicial review of a decision by the Commissioner of Social Security pursuant to 42 U.S.C. § 405(g). The ALJ found the plaintiff to be not entirely credible. Thereafter, plaintiff filed a Motion for Summary Judgment [Doc. No. 13], in which he argues that the Administrative Law Judge (ALJ) failed to state logical reasons or cite substantial evidence to support the decision to deny Social Security benefits to the plaintiff under Title II of the Social Security Act. In response, the defendant filed a Motion for Summary Judgment and argued that the ALJ's decision was supported by substantial evidence and should be affirmed.

After review of the above, Magistrate Judge Kaull filed his Report and Recommendation [Doc. No. 17]. Evaluating the record as a whole, Magistrate Judge Kaull concluded that there is "substantial evidence [to] support[] the ALJ's decision that Plaintiff was not under a disability at any time through the date of his decision." R & R at 18. It was recommended that plaintiff's Motion for Summary Judgment [Doc. No. 13] be denied and defendant's Motion for Summary Judgment [Doc. No. 17] be granted.

On December 13, 2007, the plaintiff filed his Objections to the Report and Recommendation [Doc. No. 20]. In his Objections [Doc. No. 20], plaintiff argues that the Magistrate Judge erred in finding that the ALJ's decision regarding the plaintiff's credibility was proper given the fact that some of the ALJ's statements were illogical or unnecessary.

However, the Magistrate Judge makes clear in his Report and Recommendation [Doc. No. 17] that the final determination regarding the plaintiff's benefits is supported by substantial evidence:

The Court agrees with Plaintiff that many of the ALJ's stated reasons for his negative credibility finding are incorrect or illogical, as Plaintiff argues. The

question, however, is whether the inclusion of such incorrect, illogical findings detracts from the substantial evidence supporting the determination itself. The undersigned finds it does not. Although it is unfortunate that the ALJ included unnecessary, conclusory, even illogical statements in his credibility determination, the undersigned finds the ultimate determination is nevertheless supported by substantial evidence.

R & R at 17.

For the reasons more fully stated in the R & R, this Court concurs with the Magistrate Judge's finding that the credibility analysis of the ALJ is correct and supported by substantial evidence, regardless of incorrect or illogical statements made by the ALJ. The plaintiff has made conflicting and inconsistent statements regarding the time frame of his injuries and back pain and the causes of each. See R & R at 14-16.

In light of the above, it is clear to the Court that the findings of the ALJ are supported by substantial evidence. As indicated by the Report and Recommendation, the **Court FINDS that the claimant was not under a disability as defined by Title II of the Social Security Act.**

For the foregoing reasons and those more fully stated in the Report and Recommendation of United States Magistrate Judge John S. Kaul [Doc. No. 17], the Court **ORDERS** as follows:

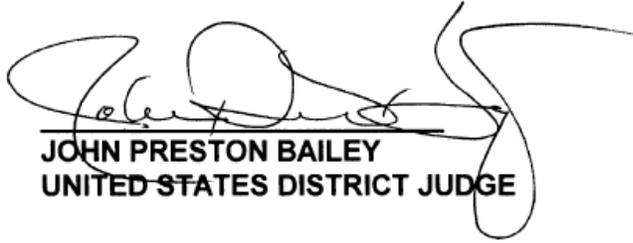
1. **The Report and Recommendation of the Magistrate Judge [Doc. No. 17] is ORDERED ADOPTED;**
2. **Defendant's Motion for Summary Judgment [Doc. No. 16] is GRANTED;**
3. **Plaintiff's Motion for Summary Judgment [Doc. No. 13] is DENIED;**
4. **Plaintiff's Motion for Extension of Time to File Objections/Exceptions to Report and Recommendation [Doc. No. 18] is DENIED AS MOOT;**

5. This action is **DISMISSED WITH PREJUDICE** and is to be **STRICKEN** from the active docket of the Court.

It is so **ORDERED**.

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

DATED: February 20, 2008.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE