

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

JEFFREY TINGLER,

Plaintiff,

v.

**Civil Action No. 3:07-CV-111
(Judge Bailey)**

**MICHAEL J. ASTRUE,
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 of United States Magistrate Judge James E. Seibert [Doc. 17] dated August 21, 2008, to which neither party filed objections. 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 findings 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, because no objections have been filed, this report and recommendation ("R & R") will be reviewed for clear error. Upon review of the R & R and the record, it is the opinion of this Court that the Magistrate Judge's Report and Recommendation [**Doc. 17**] should be, and is, hereby **ORDERED ADOPTED**.

For reasons more fully stated in the Report and Recommendation of United States

Magistrate Judge James E. Seibert [Doc. 17], this Court **ORDERS** that:

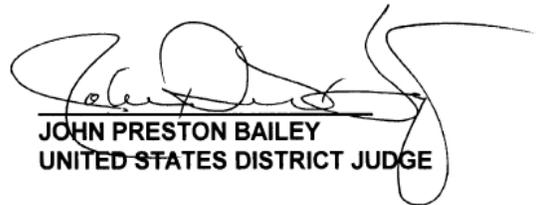
1. Claimant's Motion for Summary Judgment [**Doc. 14**] be **DENIED** and this action be **REMANDED** to the ALJ to determine: 1) Whether any of claimant's three I.Q. tests were valid and if so, why, and if not, why not; 2) Whether any valid IQ test of Claimant taken after age 22, and other evidence of record, demonstrate or support the onset of the impairment before age 22; and 3) If the ALJ finds the onset of the impairment before age 22, then whether claimant met listing 12.05(C) and if so, why, and if not, why not.

2. Commissioner's Motion for Summary Judgment [**Doc. 15**] be **DENIED** for the same reasons set forth above.

It is so **ORDERED**.

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

DATED: September 11, 2008.


JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE