

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

JEFFREY L. BOWMAN,

Plaintiff,

v.

CIVIL ACTION NO. 1:09CV137
(Judge Keeley)

MICHAEL J. ASTRUE, COMMISSIONER
OF SOCIAL SECURITY,

Defendant.

ORDER ADOPTING MAGISTRATE JUDGE'S
OPINION/REPORT AND RECOMMENDATION

Pursuant to 28 U.S.C. §636(b)(1)(B), Rule 72(b), Federal Rules of Civil Procedure and Local Court Rule 4.01(d), on September 24, 2009, the Court referred this Social Security action to United States Magistrate Judge John S. Kaul with directions to submit proposed findings of fact and a recommendation for disposition.

On January 27, 2011, Magistrate Judge Kaul filed his Report and Recommendation ("R&R"), and directed the parties, in accordance with 28 U.S.C. §636(b)(1) and Rule 6(e), Fed. R. Civ. P., to file any written objections with the Clerk of Court within fourteen (14) days after being served with a copy of the R&R. He further directed the parties that failure to file objections would result in a waiver of the right to appeal from the judgment of this Court. The parties did not file any objections.

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Upon consideration of Magistrate Judge's recommendation and having received no written objections,¹ the Court accepts and approves the R&R and

ORDERS that Magistrate Judge Kaul's Report and Recommendation be accepted in whole and that this civil action be disposed of in accordance with the recommendation of the magistrate judge.

Accordingly:

1. The plaintiff's Motion to Remand or Alternatively, Motion to Supplement Court Transcript (dkt. no. 10) is **DENIED**;
2. The defendant's motion to Strike Plaintiff's Motion for Summary Judgment and Defendant's Motion for Summary Judgment (dkt. no. 12) is **DENIED**;
3. The plaintiff's second Motion for Summary Judgment (Docket No. 14) is **DENIED**;
4. The plaintiff's Motion for Summary Judgment (dkt. no. 11) is **GRANTED-IN-PART**;

¹ The failure of the parties to object to the Report and Recommendation not only waives their appellate rights in this matter, but also relieves the Court of any obligation to conduct a *de novo* review of the issues presented. See Wells v. Shriners Hospital, 109 F.3d 198, 199-200 (4th Cir. 1997); Thomas v. Arn, 474 U.S. 140, 148-153 (1985).

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3. The plaintiff's claim is **REMANDED** to the Commissioner pursuant to sentence four of 42 U.S.C. §§ 405(g) and 13839c)(3), for further proceedings consistent with the magistrate judge's report and recommendation; and
4. This civil action is **DISMISSED WITH PREJUDICE** and **RETIRED** from the docket of this Court.

The Clerk of Court is directed to enter a separate judgment order. Fed.R.Civ.P. 58. If a petition for fees pursuant to the Equal Access to Justice Act (EAJA) is contemplated, the plaintiff is warned that, as announced in Shalala v. Schaefer, 113 S.Ct. 2625 (1993), the time for such a petition expires ninety days thereafter.

The Court directs the Clerk of Court to transmit copies of this Order to counsel of record.

DATED: February 23, 2011

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