

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

GERALDINE ECKSTEIN,

Plaintiff,

vs.

Case No. 2:07-cv-641-FtM-29DNF

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

OPINION AND ORDER

This matter is before the Court on consideration of the Magistrate Judge's Report and Recommendation (Doc. #30), filed January 16, 2009, recommending that the Decision of the Commissioner be reversed and remanded. No objections have been filed and the time to do so has expired.

The Court reviews the Commissioner's decision to determine if it is supported by substantial evidence and based upon proper legal standards. Crawford v. Comm'r of Soc. Sec., 363 F.3d 1155, 1158 (11th Cir. 2004). Substantial evidence is more than a scintilla but less than a preponderance, and is such relevant evidence as a reasonable person would accept as adequate to support a conclusion. Moore v. Barnhart, 405 F.3d 1206, 1211 (11th Cir. 2005); Crawford, 363 F.3d at 1158. Even if the evidence preponderates against the Commissioner's findings, the Court must affirm if the decision reached is supported by substantial evidence. Crawford, 363 F.3d at 1158-59. The Court does not decide facts anew, make credibility

judgments, reweigh the evidence, or substitute its judgment for that of the Commissioner. Moore, 405 F.3d at 1211; Dyer v. Barnhart, 395 F.3d 1206, 1210 (11th Cir. 2005). The magistrate judge, district judge and appellate judges all apply the same legal standards to the review of the Commissioner's decision. Dyer, 395 F.3d at 1210; Shinn v. Comm'r of Soc. Sec., 391 F.3d 1276, 1282 (11th Cir. 2004); Phillips v. Barnhart, 357 F.3d 1232, 1240 n.8 (11th Cir. 2004). After an independent review, the Court agrees with the findings and recommendations in the Report and Recommendation.

Accordingly, it is now


ORDERED:

1. The Report and Recommendation (Doc. #30) is hereby **adopted** and incorporated herein.

2. The Decision of the Commissioner is **reversed and remanded** pursuant to 42 U.S.C. § 405(g) to allow the Commissioner to re-evaluate the extent of the Plaintiff's residual functional capacity and the medical opinions of record, to consider the combined effect of all impairments, evaluate the extent of all Plaintiff's limitations and to conduct a supplemental hearing to take additional evidence relevant to the plaintiff's impairments and make new findings consistent with this Opinion and Order and adopted Report and Recommendation.

3. The Clerk shall enter judgment accordingly and close the file.

DONE AND ORDERED at Fort Myers, Florida, this 2nd day of February, 2009.



JOHN E. STEELE
United States District Judge

Copies:
Hon. Douglas N. Frazier
United States Magistrate Judge

Counsel of Record
Unrepresented parties