

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

**AINSLEY S. KELLY, survivor
of Jessi-Kealoha Phoenix,**

Plaintiff,

CV 09-6324-JE

OPINION AND ORDER

v.

**MICHAEL J. ASTRUE,
Commissioner of Social Security,**

Defendant.

MOSMAN, J.,

On February 9, 2011, Magistrate Judge Jelderks issued a Findings and Recommendation (“F&R”) (#16) in the above-captioned case recommending that the above-captioned matter be remanded to the Agency for an immediate award of benefits. No objections were filed.

DISCUSSION

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to make a de novo determination regarding those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, de novo or under any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328

F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any of the magistrate judge's F&R. 28 U.S.C. § 636(b)(1)(C).

Upon review, I agree with Judge Jelderks's recommendation, I ADOPT the F&R (#16) as my own opinion, and I REMAND the above-captioned matter to the Agency for immediate award of benefits.

IT IS SO ORDERED.

DATED this 24th day of March, 2011.

/s/ Michael W. Mosman
MICHAEL W. MOSMAN
United States District Court