

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

DIANA KRIEG,

Plaintiff,

v.

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

Defendant.

Case No. CV 10-950-HU

OPINION AND ORDER

Tim D. Wilborn
P.O. Box 2768
Oregon City, Oregon 97045
Attorney for Plaintiff

Amanda Marshall
United States Attorney
Adrian L. Brown
U.S. Attorney's Office
District of Oregon
1000 S.W. Third Avenue, Suite 600
Portland, Oregon 97204

Benjamin J. Groebner
Social Security Administration
Office of General Counsel
701 Fifth Avenue, Suite 2900
M/S 221A
Seattle, Washington 98104
Attorneys for Defendant

SIMON, District Judge:

On October 31, 2011, Magistrate Judge Dennis J. Hubel filed Findings and Recommendations in this case (doc. # 16). Judge Hubel recommended that the Commissioner's decision be reversed. No objections have been filed.

Under the Federal Magistrates Act, the court may "accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate's findings and recommendations, "the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.*; Fed. R. Civ. P. 72(b)(3).

If, however, no objections are filed, the Magistrates Act does not prescribe any standard of review. In such cases, "[t]here is no indication that Congress, in enacting [the Magistrates Act] intended to require a district judge to review a magistrate's report[.]" *Thomas v. Arn*, 474 U.S. 140, 152 (1985); *see also United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*) (court must review *de novo* magistrate's findings and recommendations if objection is made, "but not otherwise").

Although in the absence of objections no review is required, the Magistrates Act "does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard." *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Rule 72(b) of the Federal Rules of Civil Procedure recommend that "[w]hen no timely objection is filed," the court review the magistrate's findings and recommendations for "clear error on the face of the record."

No objections having been made, the court follows the recommendation of the Advisory Committee and reviews Magistrate Judge Hubel's findings and recommendations for clear error

on the face of the record. No such error is apparent.

Accordingly, I ADOPT Magistrate Judge Hubel's Findings and Recommendation (docket # 16). This case is reversed and remanded for the payment of benefits.

IT IS SO ORDERED.

DATED this 4th day of January, 2012.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge