

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION**

MELISSA DENISE PHILLIPS,)
)
 Plaintiff,)
 v.)
)
 NANCY A. BERRYHILL, Acting)
 Commissioner, Social Security)
 Administration,)
)
 Defendant.)

Civil Action Number
5:16-cv-1565-AKK

MEMORANDUM OPINION

Melissa Denise Phillips brings this action pursuant to Section 405(g) of the Social Security Act (“the Act”), 42 U.S.C. § 405(g), seeking review of the final adverse decision of the Commissioner of the Social Security Administration (“SSA”). On January 11, 2018, the magistrate judge to whom the case is referred entered a Report and Recommendation recommending that the court affirm the Commissioner’s decision. Doc. 13. Phillips has now filed timely objections to the magistrate judge’s report and recommendation. Doc. 14.

Having reviewed Phillips’ objections, the previous briefing in this case, and the magistrate judge’s Report and Recommendation, the court notes that much of Phillips’ objection repeats the arguments from her earlier briefs verbatim. As the magistrate judge’s Report and Recommendation adequately addresses these

contentions, the court will not reiterate the magistrate judge's legal reasoning, but address only those portions of Phillips' objection that raise new issues.

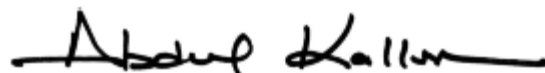
Phillips contends that the magistrate judge should have found that the ALJ erred by relying on Dr. Levine's testimony that Phillips did not have ankylosing spondylitis, because this testimony is allegedly contradicted by the medical record. Doc. 14 at 2-4. Specifically, Phillips points to Dr. Sammons' notes from a 2012 visit, which state that "[w]e saw [Phillips] back in 2010 and found ankylosing spondylitis with pain" and that "[s]he has findings consistent with ankylosing spondylitis . . . [,]" as being inconsistent with the magistrate judge's finding that Dr. Sammons never diagnosed Phillips with ankylosing spondylitis. *Id.* at 3-4. However, the magistrate judge noted that the Dr. Sammons' 2012 statement that he had previously diagnosed Phillips with ankylosing spondylitis was contradicted by Dr. Sammons' contemporaneous notes from the 2010, which state that Phillips' symptoms were only "possibly consistent with ankylosing spondylitis[.]" Doc. 13 at 7. The magistrate judge correctly concluded that Dr. Sammons had never made a definitive diagnosis of ankylosing spondylitis, but only provided "an equivocal potential diagnosis." *Id.* at 10-11. Thus, Dr. Levine's testimony that Phillips does not have ankylosing spondylitis is not contradicted by the medical record, and this objection does not support rejecting the magistrate judge's report and recommendation.

Phillips next contends that the magistrate judge erred in finding that the ALJ's rejection of Phillips' pain testimony was supported by the fact that "there is no objective evidence supporting muscle spasms causing kyphosis" because kyphosis is caused by fixation of the spine, rather than muscle spasms. Doc. 14 at 17-19. However, this objection takes the magistrate judge's finding out of context. Taken in full, the magistrate judge found that "[o]bjective evidence of kyphosis does not undermine the ALJ's conclusion that there is no objective evidence supporting muscle spasms causing that kyphosis." Doc. 13 at 18-19. Thus, the medical cause of kyphosis is irrelevant to the magistrate judge's conclusion; instead, it is the lack of objective evidence that Phillips suffers from muscle spasms that supports the ALJ's decision not to credit Phillips' pain testimony. *See id.* Accordingly, this objection does not support rejecting the magistrate judge's Report and Recommendation.

Based on the foregoing, the court hereby **ADOPTS** the report of the magistrate judge. The court further **ACCEPTS** the recommendation of the magistrate judge that the decision of the Commissioner be affirmed.

A separate order in conformity with this Memorandum Opinion will be entered contemporaneously herewith.

DONE the 16th day of February, 2018.



ABDUL K. KALLON
UNITED STATES DISTRICT JUDGE