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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Rena Cook,
Plaintiff,
v.
Carolyn W. Colvin, Acting Commissioner of
Social Security Administration,
Defendant,

CV 14-2408 TUC DCB
ORDER

This matter was referred to Magistrate Judge Jacqueline M. Rateau, pursuant to Rules of Practice for the United States District Court, District of Arizona (Local Rules), Rule (Civil) 72.1(a), and she issued a Report and Recommendation (R&R) on August 28, 2015. (Doc. 24: R&R). She recommends remanding the case to the Administrative Law Judge (ALJ) for further proceedings on Plaintiff’s Application for Social Security Disability Insurance Benefits.

STANDARD OF REVIEW

The duties of the district court, when reviewing a R&R of a Magistrate Judge, are set forth in Rule 72 of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1). The district court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” Fed.R.Civ.P. 72(b), 28 U.S.C. § 636(b)(1). When the parties object to a R&R, “[a] judge of the [district] court shall make a *de novo* determination of those portions of the [R&R] to which objection is made.” *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985) (quoting 28 U.S.C. § 636(b)(1)). When no objections are filed, the district court does not need to review the R&R *de novo*. *Wang v. Masaitis*, 416 F.3d 992, 1000 n. 13 (9th Cir.2005); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121-22 (9th Cir.2003) (*en banc*).

1 The parties were sent copies of the R&R and instructed they had 14 days to file written
2 objections. 28 U.S.C. § 636(b), *see also*, Federal Rule of Criminal Procedure 72 (party objecting
3 to the recommended disposition has fourteen (14) days to file specific, written objections). No
4 objections have been filed.

5 REPORT AND RECOMMENDATION

6 United States Magistrate Judge Rateau considered the following issues: 1) whether the
7 ALJ accorded appropriate weight to examining physician testimony; 2) whether substantial
8 evidence supported the ALJ's findings regarding Plaintiffs ability to concentrate and remember;
9 3) whether substantial evidence supported the ALJ's evaluation of lay-witness statements, and
10 4) whether the ALJ properly evaluated the Plaintiff's credibility. The Magistrate Judge found
11 substantial evidence did support the ALJ's findings regarding concentration. She found the ALJ
12 properly evaluated the Plaintiff's credibility, and the ALJ's well-supported reasons for rejecting
13 the claimant's testimony applied equally to the lay witness testimony. The Magistrate Judge,
14 however, found remand was necessary because the ALJ failed to even mention the examining
15 physician Dr. Hassman's opinion that Plaintiff would have to change her sitting position at least
16 every hour for at least five minutes. Remand is necessary because, as the vocational expert
17 testified, such a limitation would start to decrease her ability to work on a full-time basis. "With
18 this testimony in the record, it is apparent that the limitation, if not rejected by the ALJ, would
19 have some impact on the ALJ's decision." (R&R (Doc. 24) at 8.)

20 Pursuant to 28 U.S.C. § 636(b), this Court makes a *de novo* determination as to those
21 portions of the R&R to which there are objections. 28 U.S.C. § 636(b)(1) ("A judge of the court
22 shall make a *de novo* determination of those portions of the report or specified proposed findings
23 and recommendations to which objection is made.") To the extent that no objection has been
24 made, arguments to the contrary have been waived. *McCall v. Andrus*, 628 F.2d 1185, 1187 (9th
25 Cir. 1980) (failure to object to Magistrate's report waives right to do so on appeal); *see also*,
26 Advisory Committee Notes to Fed. R. Civ. P. 72 (citing *Campbell v. United States Dist. Court*,
27 501 F.2d 196, 206 (9th Cir. 1974) (when no timely objection is filed, the court need only satisfy
28 itself that there is no clear error on the face of the record in order to accept the recommendation).

1 While there are no objections and review has, therefore, been waived, the Court
2 nevertheless reviews at a minimum, *de novo*, the Magistrate Judge's conclusions of law.
3 *Robbins v. Carey*, 481 F.3d 1143, 1147 (9th Cir. 2007) (citing *Turner v. Duncan*, 158 F.3d 449,
4 455 (9th Cir. 1998) (conclusions of law by a magistrate judge reviewed *de novo*); *Martinez v.*
5 *Ylst*, 951 F.2d 1153, 1156 (9th Cir. 1991) (failure to object standing alone will not ordinarily
6 waive question of law, but is a factor in considering the propriety of finding waiver)). The Court
7 finds the R&R to be thorough and well-reasoned, without any clear error in law or fact. *See*
8 *United States v. Remsing*, 874 F.2d 614, 617-618 (9th Cir. 1989) (*United States v. Remsing*, 874
9 F.2d 614, 617-618 (9th Cir. 1989) (citing 28 U.S.C. § 636(b)(1)(A) as providing for district court
10 to reconsider matters delegated to magistrate judge when there is clear error or recommendation
11 is contrary to law). The Court accepts and adopts the R&R as the opinion of the Court, pursuant
12 to 28 U.S.C. § 636(b)(1). For the reasons stated in the R&R, the Court remands this case to the
13 ALJ for further consideration of Dr. Hassman's opinion and to provide his interpretation thereof.
14 In light of the evaluation on remand, it may also be necessary to reevaluate Plaintiff's RFC and
15 work abilities.

16 **Accordingly,**

17 **IT IS ORDERED** that the Report and Recommendation (Doc. 24) is adopted as the
18 opinion of the Court.

19 **IT IS FURTHER ORDERED** remanding this case for further administrative
20 proceedings.

21 **IT IS FURTHER ORDERED** that the Clerk of the Court shall enter Judgment
22 accordingly.

23 DATED this 29th day of October, 2015.

24 
25 David C. Bury
26 United States District Judge
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