

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

ANITA BROWN

PLAINTIFF

V.

CIVIL NO. 11-2151

MICHAEL J. ASTRUE, Commissioner of
Social Security Administration

DEFENDANT

JUDGMENT

Now on this 25th Day of July, 2012, comes on for consideration the Report and Recommendation dated May 3, 2012, by the Honorable Barry A. Bryant, United States Magistrate Judge for the Western District of Arkansas. (Doc. 11). Also before the Court are Plaintiff's Objections. (Doc. 12).

After a *de novo* review, the Court, being well and sufficiently advised, finds as follows: The report and recommendation is proper and should be and hereby is adopted in its entirety. The record shows that substantial evidence supports the Administrative Law Judge's determination of Plaintiff's Residual Functional Capacity. The Administrative Law Judge properly analyzed Plaintiff's credibility with respect to her subjective complaints, addressing the *Polaski* factors and pointing out inconsistencies between Plaintiff's testimony and the record. The Administrative Law Judge did not err in his

consideration of Dr. Floyd's consultative examination. Plaintiff produced no evidence that anyone other than Dr. Floyd conducted the May 6, 2009, consultative examination. The Administrative Law Judge properly found that Plaintiff did not have non-exertional limitations and did not err by applying the Medical-Vocational Guidelines. Finally, the Appeals Council was not required to consider Dr. Hoyt's September 3, 2010, report because it is not material and does not relate to the period on or before the date of the ALJ's decision of July 2, 2010. The report was, however, made a part of the record in this matter. The Court gives no weight to Dr. Hoyt's conclusory statement that the Plaintiff is "certainly incapable of gainful employment", as that determination is reserved for the Commissioner.

The Court hereby affirms the Commissioner's decision and DISMISSES Plaintiff's Complaint (Doc. 1) WITH PREJUDICE.

IT IS SO ORDERED.

/s/ Robert T. Dawson
Honorable Robert T. Dawson
United States District Judge