

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HARRISON DIVISION

JUSTIN E. PARTEE

PLAINTIFF

v.

Civil No. 08-3030

MICHAEL J. ASTRUE, Commissioner
Social Security Administration

DEFENDANT

J U D G M E N T

Now on this 14th day of September, 2009, comes on for consideration the Report and Recommendation issued by the Honorable James Marschewski, United States Magistrate Judge for the Western District of Arkansas. (Doc. 12.) The Court, being well and sufficiently advised, finds and orders as follows with respect thereto:

1. In his Report and Recommendation, Magistrate Judge Marschewski found substantial evidence to support the Commissioner's decision to deny plaintiff benefits. Magistrate Judge Marschewski, therefore, recommended that the Commissioner's decision be affirmed and that plaintiff's action be dismissed.

2. Plaintiff has filed objections (Doc. 13) to the Report and Recommendation, asserting that the ALJ's assessment of plaintiff's residual functional capacity (RFC) was not supported by substantial evidence. Specifically, plaintiff asserts that the ALJ erred in crediting the evaluation of Dr. Nancy Bunting over the evaluation of Dr. Vann Smith.

3. The Court has reviewed this case *de novo*. As observed by Magistrate Judge Marschewski, it is the ALJ's function to weigh

conflicting evidence and to resolve disagreements among physicians. See Kirby v. Astrue, 500 F.3d 705, 709 (8th Cir. 2007). The ALJ properly considered all the medical records, plaintiff's subjective complaints, and plaintiff's daily activities, and found Dr. Smith's assessment of plaintiff's RFC to be highly inconsistent with this evidence. The Court, therefore, sees no merit to plaintiff's objections and finds that the ALJ's decision was supported by substantial evidence.

4. Accordingly, the Court hereby adopts the Report and Recommendation; affirms the decision of the Administrative Law Judge; and dismisses plaintiff's complaint with prejudice.

IT IS SO ORDERED.

/S/JIMM LARRY HENDREN
JIMM LARRY HENDREN
UNITED STATES DISTRICT JUDGE