

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

JOSEPH E. WILSON

PLAINTIFF

vs.

Civil No. 5:09-cv-05057

MICHAEL J. ASTRUE
Commissioner, Social Security Administration

DEFENDANT

REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE

On December 3, 2009, Plaintiff filed this Motion to Dismiss. (Doc. No. 7). Defendant did not respond or file objections to this motion. Pursuant to the provisions of 28 U.S.C. § 636(b)(1) and (3) (2005), the Honorable Jimm Larry Hendren referred this motion to the Honorable Barry A. Bryant for the purpose of making a report and recommendation. This Court, having reviewed this motion recommends this motion be **GRANTED**.

Absent any pending counterclaims, a court is authorized to dismiss a case at the Plaintiff's request on the terms that the court considers proper. FED. R. CIV. P. 41(a)(2). Defendant has asserted no counterclaims and has not objected to this motion.

After taking into consideration said Motion, this Court recommends the Plaintiff's Motion to Dismiss (Doc. No. 7) should be **GRANTED** and Plaintiff's case be dismissed without prejudice.

The parties have fourteen (14) days from receipt of this Report and Recommendation in which to file written objections pursuant to 28 U.S.C. § 636(b)(1). The failure to file timely objections may result in waiver of the right to appeal questions of fact. The parties are reminded that objections must be both timely and specific to trigger *de novo* review by the district court. See *Thompson v. Nix*, 897 F.2d 356, 357 (8th Cir. 1990).

ENTERED this 21st day of December, 2009.

/s/ Barry A. Bryant _____
HON. BARRY A. BRYANT
U.S. MAGISTRATE JUDGE