

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FT. MYERS DIVISION**

CARLA BATTEN,  
Plaintiff,

v.

Case No: 2:09-cv-22-FtM-36SPC

MICHAEL J. ASTRUE  
COMMISSIONER OF SOCIAL SECURITY,  
Defendant.

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**ORDER**

This cause comes before the Court upon the Report and Recommendation submitted by United States Magistrate Judge Sheri Polster Chappell, (Doc. 27 ), filed on March 1, 2010 which recommends that the decision of the Defendant Commissioner denying the Plaintiff's application for Social Security disability benefits be affirmed. On March 9, 2010, the Plaintiff filed an objection to the Report and Recommendation (Doc. 28). On March 18, 2010, the Commissioner filed a notice that he would not reply to the Plaintiff's objection (Doc. 29).

The District Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). A determination by the Commissioner that a claimant is not disabled must be upheld if it is supported by substantial evidence and comports with applicable legal standards. *Crawford v. Comm'r of Soc.*, 363 F.3d 1155, 1158 (11th Cir. 2004). Substantial evidence is more than a scintilla but less than a preponderance; it may be properly characterized as "such relevant

evidence as a reasonable person would accept as adequate to support a conclusion.” *Moore v. Barnhart*, 405 F.3d 1208, 1211 (11th Cir. 2005); *Crawford*, 363 F.3d at 1158. Even if the evidence weighs against the Commissioner’s findings, the Court must affirm if the decision reached is supported by substantial evidence. *Crawford*, 363 F.3d at 1158–59. The Court does not decide facts anew, make credibility judgments, re-weigh the evidence, or substitute its judgment for that of the Commissioner. *Moore*, 405 F.3d at 1211; *Dyer v. Barnhart*, 395 F.3d 1206, 1210 (11th Cir. 2005). The magistrate judge, district judge and appellate judges all apply the same legal standards to their reviews of the Commissioner’s decision. *Dyer*, 395 F.3d at 1210; *Shinn v. Comm’r of Soc. Sec.*, 391 F.3d 1276, 1282 (11th Cir. 2004); *Phillips v. Barnhart*, 357 F.3d 1232, 1240 n. 8 (11th Cir. 2004). While the Court reviews the Commissioner’s decision with deference to factual findings, no such deference is given to legal conclusions. *Keeton v. Department of HHS*, 21 F.3d 1064, 1066 (11th Cir. 1994) (citing *Cornelius v. Sullivan*, 936 F. 2d 1143, 1145 (11th Cir. 1991)).

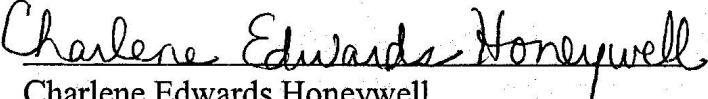
Upon consideration of the Report and Recommendation and Plaintiff’s objection thereto, and upon this Court’s independent examination of the file, it is determined that the Report and Recommendation (Doc. 27) should be adopted.

Accordingly, it is now **ORDERED AND ADJUDGED** that

1. The Magistrate Judge’s Report and Recommendation (Doc. 27) is adopted and incorporated by reference in this Order of the Court, for all purposes, including appellate review.

2. The decision of the Commissioner of the United States Social Security Administration is **AFFIRMED**; and
3. The Clerk is directed to enter judgment in favor of Defendant, terminate all pending motions, and close the case.

**DONE AND ORDERED** at Fort Myers, Florida this 30<sup>th</sup> day of June, 2010.

  
Charlene Edwards Honeywell  
United States District Judge

Copies to:  
Magistrate Judge Sheri Polster Chappell  
Counsel of Record