

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

CIVIL ACTION NO. 3:13-CV-400-H

SAM G. SMITH

PLAINTIFF

V.

CAROLYN W. COLVIN,
ACTING COMMISSIONER OF SOCIAL SECURITY

DEFENDANT

MEMORANDUM OPINION AND ORDER

Plaintiff has filed this action pursuant to 42 U.S.C. § 405(g) seeking judicial review of an administrative decision of the Commissioner of Social Security denying his application for disability insurance benefits. Plaintiff asserts that the Administrative Law Judge (“ALJ”) erred by concluding that he retained residual functional capacity to perform light work with certain limitations.

The matter was referred to the Magistrate Judge who has issued Findings of Fact, Conclusions of Law and a Recommendation that the district court should deny Plaintiff’s request to remand this matter for consideration of additional evidence, but should grant his request that the matter be remanded because the ALJ did not comply with the applicable regulations when she evaluated the opinion of his treating orthopedist, Dr. Carroll Witten. The Commissioner has objected to the Magistrate Judge’s recommendations to remand.

The Court has reviewed the Findings of Fact and Recommendations, as well as the objectives to it. Although there may be room for some disagreement here, the Court agrees with the Magistrate Judge that remand is necessary because the ALJ’s analysis of Plaintiff’s

functional capacity does not provide adequate specific reasons for her decision to afford it less than controlling weight.

Being otherwise sufficiently advised,

IT IS HEREBY ORDERED that the Court adopts the Recommendation of the Magistrate Judge and that the decision of the Commissioner is AFFIRMED except that it failed to adequately explain the reasons for failing to give controlling weight and functional capacity assessment of Plaintiff's orthopedic surgeon. Therefore, this matter is REMANDED to the Commissioner to more properly evaluate and describe Dr. Witten's functional capacity assessment.

This is a final order.

cc: Counsel of Record
Magistrate Judge James D. Moyer