

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Russell L. Grubb,

Plaintiff,

v.

Case No. 12-14755
Honorable Sean F. Cox
Magistrate Judge Mona K. Majzoub

Commissioner of Social Security,

Defendant.

**ORDER ACCEPTING AND ADOPTING MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION**

Plaintiff brought this action seeking judicial review of Defendant the Commissioner of Social Security's determination that he is not entitled to social security benefits for his physical and mental impairments under 42 U.S.C. § 405(g). (Doc. #1).

Shortly thereafter, Plaintiff and Defendant filed cross-motions for summary judgment. (Doc. #13 and Doc. #15). These motions were referred to Magistrate Judge Mona K. Majzoub for issuance of a report and recommendation, pursuant to 28 U.S.C. § 636(b)(1).

On September 11, 2013, Magistrate Judge Majzoub issued a Report and Recommendation ("R&R") wherein she recommends that the Court deny Plaintiff's Motion for Summary Judgment and grant Defendant's Motion for Summary Judgment. (Docket Entry No. 16). Plaintiff timely filed objections to this R&R. (Doc. #17).

Pursuant to FED. R. CIV. P. 72(b), a party objecting to the recommended disposition of a matter by a Magistrate Judge must file objections to the R&R within fourteen (14) days after being

served with a copy of the R&R. “The district judge must determine de novo any part of the magistrate judge’s disposition that has been properly objected to.” *Id.*

Having considered Plaintiff’s objections to the R&R, the Court finds the objections to be without merit. The Court shall therefore adopt the R&R, deny Plaintiff’s Motion for Summary Judgment, and grant Defendant’s Motion for Summary Judgment.

ANALYSIS

Magistrate Judge Majzoub’s September 11, 2013 R&R recommends that the Court deny Plaintiff’s Motion for Summary Judgment and Grant Defendant’s Motion for Summary Judgment. Plaintiff’s Motion for Summary Judgment sought to have the Court reverse the Administrative Law Judge’s (ALJ) conclusion that Plaintiff’s mental impairments are not severe because this conclusion, Plaintiff alleges, is contrary to the evidence presented. (Pl.’s Br. at 6). Plaintiff also argued that even though Plaintiff’s depression was construed as a non-severe impairment, the ALJ further erred when he failed to take into account any limitations caused by Plaintiff’s non-severe impairments when determining Plaintiff’s residual functional capacity (“RFC”). (Pl.’s Br. at 8).

Defendant cross-motivated for summary judgment, arguing that the ALJ’s characterization of Plaintiff’s mental impairment was supported by substantial evidence and that Plaintiff presented no evidence of functional limitations based on his mental impairment, whether the impairment severe or non-severe. (Def.’s Br. at 4, 8).

Magistrate Judge Majzoub recommended that the Court deny Plaintiff’s motion and grant Defendant’s motion because the ALJ relied on substantial evidence, including Plaintiff’s physicians’ reports and notes, in concluding that Plaintiff does not suffer from a severe impairment due to his depression and anxiety. (R&R at 10). Magistrate Judge Majzoub also found that Plaintiff did not

allege, nor did the record show, that Plaintiff's depression and anxiety caused any limitation in his ability to perform basic work activities. (R&R at 10).

In objecting to the September 11, 2013 R&R, Plaintiff raises one objection: that Magistrate Judge Majzoub "erred in finding that the ALJ was not obliged to consider plaintiff's mental impairments in assessing his residual functional capacity" (Pl.'s Obj. at 2).

Plaintiff's objection misconstrues the report and recommendation. Magistrate Judge Majzoub noted that "Plaintiff is correct that the ALJ did not include any functional limitations based on Plaintiff's non-severe mental impairments, other than his own subjective complaints of 'daytime somnolence' and that 'he did not feel like doing anything or going out'" (R&R at 11). Magistrate Judge Majzoub went on to dispense with Plaintiff's argument, however, finding that "Plaintiff did not and does not allege even minimal functional limitations." (R&R at 11).

Thus, Magistrate Judge Majzoub did not find that the ALJ was not required to consider Plaintiff's non-severe mental impairments in assessing his RFC. Rather, Magistrate Judge Majzoub found that the ALJ was correct in not further analyzing Plaintiff's non-severe impairments for evidence of limitations because Plaintiff *presented no evidence* of functional limitations related to his non-severe impairments. (*See* R&R at 11).

Accordingly, the Court concludes that Plaintiff's objections to the September 11, 2013 R&R are without merit and shall ADOPT AND ACCEPT the September 11, 2013 R&R. Thus, the Court shall DENY Plaintiff's Motion for Summary Judgment and GRANT Defendant's Motion for Summary Judgment.

ORDER

For the reasons set forth above IT IS ORDERED that the Court ACCEPTS AND ADOPTS

the September 11, 2013 R&R. IT IS FURTHER ORDERED that Plaintiff's Motion for Summary Judgment is DENIED and Defendant's Motion for Summary Judgment is GRANTED. IT IS FURTHER ORDERED that Plaintiff's First Amended Complaint shall be DISMISSED WITH PREJUDICE.

IT IS SO ORDERED.

S/Sean F. Cox
Sean F. Cox
United States District Judge

Dated: November 27, 2013

I hereby certify that a copy of the foregoing document was served upon counsel of record on November 27, 2013, by electronic and/or ordinary mail.

S/Jennifer McCoy
Case Manager