

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

PETER J. TODD,

Civil No. 08-0444 (JRT/FLN)

Plaintiff,

v.

**ORDER ADOPTING REPORT AND
RECOMMENDATION**

MICHAEL J. ASTRUE, *Commissioner of
Social Security*,

Defendants.

FRANK LEVIN AND JAMES ROTH, **FRANK W. LEVIN, PA**, 331
Second Avenue South, Suite 420, Minneapolis, MN 55401, for plaintiff.

Lonnie Bryan, Assistant United States Attorney, **OFFICE OF THE
UNITED STATES ATTORNEY**, 300 South Fourth Street, Suite 600,
Minneapolis, MN 55415, for defendant.

The above matter comes before the Court upon the Report and Recommendation of United States Magistrate Judge Franklin L. Noel dated February 20, 2009 [Docket No. 35]. No objections have been filed to that Report and Recommendation in the time period permitted.

Based upon the Report and Recommendation of the Magistrate Judge, upon all of the files, records, and proceedings herein, the Court now makes and enters the following Order.

IT IS HEREBY ORDERED that:

1. Plaintiff's Motion for Summary Judgment [Docket No. 26] is **GRANTED**; and
2. Defendant's Motion for Summary Judgment [Docket No. 30] is **DENIED**.

3. The Commissioner's decision is **REVERSED** and the case is **REMANDED** to the Secretary for the immediate calculation and award of benefits.

DATED: March 13, 2009
at Minneapolis, Minnesota.

s/John R. Tunheim
JOHN R. TUNHEIM
United States District Judge