

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Todd A. Johnson,

Civil No. 12-1153 (DWF/JJG)

Plaintiff,

v.

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

Carolyn W. Colvin,
Acting Commissioner of Social Security,

Defendant.

This matter is before the Court upon Defendant Acting Commissioner of Social Security Carolyn W. Colvin's ("Defendant's") Objections, (Doc. No. 22), to Magistrate Judge Jeanne J. Graham's August 19, 2013 Report and Recommendation ("R&R") (Doc. No. 21), insofar as it recommends that: (1) Plaintiff's motion for summary judgment be granted; (2) Defendant's motion for summary judgment be denied; (3) the case be remanded to the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g) for an award of benefits as of March 29, 2006; and (4) if the Report and Recommendation is adopted, that judgment be entered accordingly. Plaintiff Todd A. Johnson filed a Response to Defendant's Objections on September 17, 2013. (Doc. No. 24.)

The Court has conducted a *de novo* review of the record, including a review of the arguments and submissions of counsel, pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.2(b). The factual background for the above-entitled matter is clearly and precisely set forth in the Report and Recommendation and is incorporated by reference for purposes of Defendant's objections.

In the Report and Recommendation, the Magistrate Judge concluded that the record as a whole is consistent with Plaintiff's allegations of chronic pain that would preclude him from performing work at an average pace and without an impermissible number of absences due to pain and that Plaintiff thereby established disability. (R&R at 19.) The Magistrate Judge also held that because disability was established, the ALJ's decision should be reversed and not remanded for further consideration. (*Id.*)

In Defendant's Objections to the Magistrate Judge's Report and Recommendation, Defendant argues that the substantial evidence supports the findings by the ALJ that Plaintiff could perform his past relevant work and that Plaintiff's complaints of debilitating pain and symptoms were not entirely credible. (Doc. No. 22 at 1.) Specifically, Defendant argues that: (1) the Magistrate Judge's reliance on medical records that post-date Plaintiff's insured status was inaccurate because it failed to show Plaintiff's disabilities during the relevant time period (*id.* at 1-3); (2) that substantial evidence supports the ALJ's finding and therefore the Report and Recommendation's holding was merely reaching a different conclusion on the evidence before it (*id.* at 3-4); (3) that any reliance by the Magistrate Judge on jobs that could involve hazards or hazardous machinery was misplaced because Plaintiff waived this issue on a number of grounds (*id.* at 4-5); and (4) that the Magistrate Judge improperly relied on a credibility finding (*id.* at 6-8). Defendant also contends that if the Court disagrees with the ALJ's findings, the Court should remand the case for further consideration rather than reversing and remanding the decision for an award of benefits. (*Id.* at 8-10.)

Having carefully reviewed the record, and based upon the *de novo* review of the record and all of the arguments and submissions of the parties, the Court concludes that Defendant's objections do not warrant departure from the Magistrate Judge's Recommendation and agrees with the conclusion that Plaintiff established disability with substantial evidence. The Court being otherwise duly advised in the premises, the Court hereby enters the following:

ORDER

1. Defendant Acting Commissioner of Social Security Carolyn W. Colvin's objections (Doc. No. [22]) to Magistrate Judge Jeanne J. Graham's August 19, 2013 Report and Recommendation are **OVERRULED**.

2. Magistrate Judge Jeanne J. Graham's August 19, 2013 Report and Recommendation (Doc. No. [21]) is **ADOPTED**.

3. Plaintiff's motion for summary judgment (Doc. No. [8]) is **GRANTED**.

4. Defendant's motion for summary judgment (Doc. No. [17]) is **DENIED**.

5. The case is **REMANDED** to the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g) for an award of benefits as of March 29, 2006.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: September 26, 2013

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge