

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

KEVIN A. O'CONNELL,

Plaintiff,

-v-

1:06-CV-1113 (LEK/VEB)

MICHAEL J. ASTRUE, Commissioner
of Social Security,

Defendant.

DECISION AND ORDER

This matter comes before the Court following a Report-Recommendation filed on February 11, 2009, by the Honorable Victor E. Bianchini, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and L.R. 72.3(d) of the Northern District of New York. Report-Rec. (Dkt. No. 16).

Within ten days, excluding weekends and holidays, after a party has been served with a copy of a Magistrate Judge's Report-Recommendation, the party "may serve and file specific, written objections to the proposed findings and recommendations," FED. R. CIV. P. 72(b), in compliance with L.R. 72.1. No objections have been raised in the allotted time with respect to the Report-Recommendation filed by Judge Bianchini. Furthermore, after examining the record, the Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice.

Accordingly, it is hereby

ORDERED, that the Report-Recommendation (Dkt. No. 16) is **APPROVED** and **ADOPTED** in its **ENTIRETY**; and it is further

ORDERED, that Plaintiff's Motion for judgment on the pleadings (Dkt. No. 7) is **GRANTED in part**; and it is further

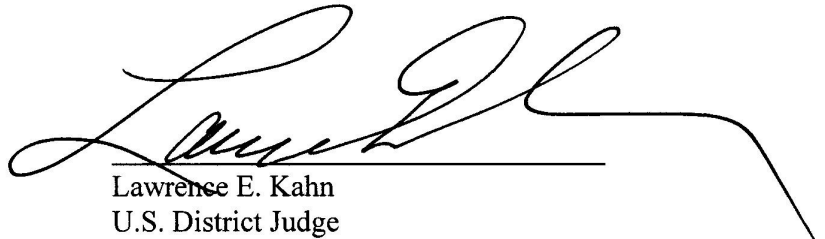
ORDERED, that Defendant's Cross-Motion for judgment on the pleadings is **DENIED**; and it is further

ORDERED, and the Complaint (Dkt. No. 1) is **REMANDED** to the Commissioner for further proceedings consistent with the Report-Recommendation; and it is further

ORDERED, that the Clerk serve a copy of this Order on all parties.

IT IS SO ORDERED.

DATED: March 09, 2009
 Albany, New York



Lawrence E. Kahn
U.S. District Judge