

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JOHN F. OAKES, JR.,

Plaintiff,

v.

5:06-CV-0332 (LEK/ DEP)

COMMISSIONER OF SOCIAL
SECURITY, Michael J. Astrue,¹

Defendant.

DECISION AND ORDER

This matter comes before the Court following a Report-Recommendation filed on March 5, 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. 17). After ten days from the service thereof, the Clerk has sent the entire file to the undersigned, including the objections by the Defendant, which were filed on March 19, 2009. Objections (Dkt. No. 18).

It is the duty of this Court to “make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b). “A [district] judge . . . may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” *Id.* This Court has considered the objections and has undertaken a de novo review of the record and has determined that the Report-Recommendation should be approved for the reasons stated therein.

¹ Michael J. Astrue became Commissioner of Social Security on February 12, 2007. Pursuant to Federal Rule of Civil Procedure 25(d), Michael J. Astrue is substituted as the Defendant in this action for Jo Anne B. Barnhart.

Accordingly, it is hereby

ORDERED, that the Report-Recommendation (Dkt. No. 17) is **APPROVED** and **ADOPTED** in its **ENTIRETY**; and it is further

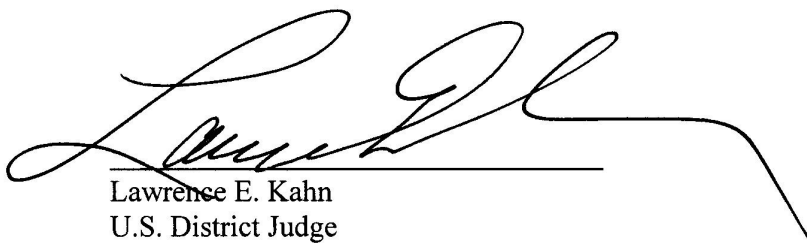
ORDERED, that Defendant's Motion for judgment on the pleadings is **DENIED**; and it is further

ORDERED, that Plaintiff's Cross-Motion for judgment on the pleadings is **GRANTED in part** and **DENIED in part**, and the matter is **REMANDED** to the Commissioner for reconsideration; and it is further

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

IT IS SO ORDERED.

DATED: April 23, 2009
Albany, New York



Lawrence E. Kahn
U.S. District Judge