

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

FREDERICK MCKINZIE,

Plaintiff,

v.

ORDER
07-CV-733

MICHAEL J. ASTRUE
Commissioner of Social Security,

Defendant.

This case was referred to Magistrate Judge H. Kenneth Schroeder, Jr., pursuant to 28 U.S.C. § 636(b)(1). On May 9, 2008, defendant filed a motion for judgment on the pleadings and on June 20, 2008, plaintiff filed a motion for judgment on the pleadings. On November 2, 2009, Magistrate Judge Schroeder filed a Report and Recommendation, recommending that defendant's motion be granted and that plaintiff's motion be denied.

Plaintiff filed objections to the Report and Recommendation on November 16, 2009 and defendant filed a response thereto. Oral argument on the objections was held on January 15, 2010.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a de novo determination of those portions of the Report and Recommendation to which objections have been made. Upon a de novo review of the Report and Recommendation, and after reviewing the submissions and hearing argument

from the parties, the Court adopts the proposed findings of the Report and Recommendation.

Accordingly, for the reasons set forth in Magistrate Judge Schroeder's Report and Recommendation, defendant's motion for judgment on the pleadings is granted and plaintiff's motion is denied.

The Clerk of Court shall take all steps necessary to close the case.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE

DATED: January 20 , 2010