

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

NICHOLAS J. SPITTLER,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting Commissioner
of Social Security,

Defendant.

ORDER
14-CV-279V(F)

The plaintiff, Nicholas J. Spittler, seeks review, pursuant to 42 U.S.C. § 405(g), of the defendant's decision denying him disability insurance benefits under the Social Security Act. See Docket Item 1.

Pursuant to 28 U.S.C. § 636(b)(1)(B), the Court (Hon. Richard J. Arcara) referred this case to United States Magistrate Judge Leslie G. Foschio "for all proceedings necessary to a determination of the merits of the factual and legal issues presented by this action" and the preparation of a Report and Recommendation. See Docket Item 12. On November 24, 2015, I replaced Judge Arcara as the district judge assigned to this matter. See Docket Item 17.

On September 15, 2014, the plaintiff moved for judgment on the pleadings, see Docket Item 11, asking that the defendant's decision "be vacated and remanded for rehearing." See Docket Item 11-1 at 30. On December 15, 2014, the defendant filed its

own motion for judgment on the pleadings. See Docket Item 15. And on April 21, 2016, Judge Foschio issued a Report and Recommendation (Docket Item 18), recommending that the case be remanded, and that, “upon remand, the ALJ should consider whether Plaintiff’s hand and foot clubbing was a severe impairment under step two of the disability analysis, and include the combined effects of Plaintiff’s hand and foot clubbing with Plaintiff’s other impairments throughout the entirety of the ALJ’s disability review analysis.” Docket Item 18 at 21. Neither side objected to the Report and Recommendation, and the time for filing objections has now passed.

A district court may accept, reject, or modify, in whole or in part, the findings or recommendation of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). In doing so, the district court must conduct a *de novo* review of those portions of a magistrate judge’s recommendation to which an objection is raised. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 require a district court to review the recommendation of a magistrate judge to which no objections are addressed. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985). This Court nevertheless has reviewed Judge Foschio’s Report and Recommendation, the underlying papers, and the administrative record. Upon that review, this Court agrees with Judge Foschio’s analysis and conclusions.

Therefore, this Court adopts Judge Foschio’s April 21, 2016 Report and Recommendation (Docket Item 18). For the reasons stated above and in the Report and Recommendation: the defendant’s motion for judgment on the pleadings (Docket

Item 15) is DENIED; the plaintiff's motion (Docket Item 11) is GRANTED as to the request for remand and DENIED as to the request for judgment on the pleadings; and the matter is remanded in accordance with Judge Foschio's April 21, 2016 Report and Recommendation (Docket Item 18).

IT IS SO ORDERED.

Dated: August 22, 2016
Buffalo, New York

s/Lawrence J. Vilaro
LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE