

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

VIDAL FIGUEROA,	:
	:
Plaintiff,	:
	:
v.	:
	:
MICHAEL J. ASTRUE,	:
Commissioner of Social Security,	:
	:
Defendant.	:

CASE NO. 1:09-CV-2793

OPINION & ORDER
[Resolving Doc. No. [25](#)]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

On December 2, 1009, Plaintiff Vidal Figueroa filed a complaint seeking judicial review under [28 U.S.C. § 405\(g\)](#) of the Defendant Commissioner of Social Security’s decision to deny his claim for disability benefits. The matter was referred to Magistrate Vernelis K. Armstrong pursuant to Local Rule 72.2.

On January 27, 2011 Magistrate Judge Armstrong issued a Report and Recommendation recommending that this Court remand the case to the Commissioner to reassess the jobs available to Figueroa given his age, education, work experience, and residual functional capacity. Magistrate Judge Armstrong otherwise recommended upholding the Administrative Law Judge's findings. [\[Doc. 25.\]](#)

The Federal Magistrates Act requires a district court to conduct a *de novo* review only of those portions of a Report and Recommendation to which the parties have made an objection. [28 U.S.C. § 636\(b\)\(1\)\(C\)](#). Parties must file any objections to a Report and Recommendation within

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fourteen days of service. Id.; Fed. R. Civ. P. 72(b)(2). Failure to object within this time waives a party's right to appeal the district court's judgment. Thomas v. Arn, 474 U.S. 140, 145 (1985); United States v. Walters, 638 F.2d 947, 949-50 (6th Cir. 1981). Absent objection, a district court may adopt the magistrate judge's report without review. See Thomas, 474 U.S. at 149.

In this case, neither party has objected to the Magistrate Judge's recommendation. Indeed, the Defendant responded to the Report and Recommendation stating that he would not file an objection. [Doc. 26.]

Moreover, having conducted its own review of the record, the Court agrees with the recommendation of Magistrate Judge Armstrong. In deeming Figueroa literate, the Administrative Law Judge (ALJ) did not ask whether Figueroa could read, write, speak, or otherwise communicate in English. [Doc. 25 at 15.] The ALJ then used this deficient literacy determination to conclude that a significant number of jobs in the national economy were available to Figueroa. [Doc. 25 at 12.]

Accordingly, this Court finds remand for evidentiary development on the issue of Figueroa's literacy appropriate.

The Court **ADOPTS** in whole Magistrate Judge Armstrong's Report and Recommendation and incorporates it fully herein by reference, and **REMANDS** the case to the Social Security Commissioner.

IT IS SO ORDERED.

Dated: February 11, 2011

s/ James S. Gwin
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE