

UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF OHIO  
 WESTERN DIVISION

PETER FREUDENBERGER,	:	
	:	
Plaintiff,	:	NO. 1:09-CV-00745
	:	
v.	:	
	:	<b>OPINION AND ORDER</b>
COMMISSIONER OF	:	
SOCIAL SECURITY,	:	
	:	
Defendant.	:	

This matter is before the Court on the Magistrate Judge’s Report and Recommendation (doc. 22), to which no objections were filed. For the reasons indicated herein, the Court ADOPTS and AFFIRMS the Magistrate Judge’s Report and Recommendation, ENTERS judgment in favor of the Defendant Commissioner, and DISMISSES this case from the docket of the Court.

**I. Background**

On October 19, 2009, Plaintiff filed his Complaint in this matter, challenging the Commissioner’s denial of his applications for supplemental security income (“SSI”), and disability insurance benefits (“DIB”), which were based on a lower back injury and bulging disks (doc. 3). The Administrative Law Judge (“ALJ”) concluded after a hearing on October 9, 2007, that Plaintiff did not qualify as disabled (doc. 22). However, the Appeals Council later remanded the matter to the ALJ, directing the ALJ to conduct another hearing based on additional medical evidence not heard at the original hearing (Id.). The ALJ conducted a

second evidentiary hearing on January 20, 2009, at which Plaintiff was represented by counsel (Id.). The ALJ again concluded that Plaintiff did not qualify for SSI or DIB, finding that though Plaintiff had severe lower back impairments, he retained the residual functional capacity ("RFC") to perform a limited range of medium level work, including his past work as a compliance officer/patient agent (Id.). On September 4, 2009, the Appeals Council denied Plaintiff's second request for review, so that the ALJ's second decision stands as the Defendant's final determination (Id.). Plaintiff appeals such decision, contending the ALJ erred by 1) improperly dismissing the findings of the treating physicians, and 2) inadequately assessing Plaintiff's pain and credibility (Id.).

## **II. The Magistrate Judge's Report and Recommendation (doc. 22)**

The Magistrate Judge noted that standard of review applicable to the ALJ's non-disability finding is to determine, after considering the whole record, whether such finding is supported by substantial evidence, that is, evidence that a reasonable mind might accept as adequate to support a conclusion (doc. 22, citing Richardson v. Perales, 402 U.S. 389, 401 (1971)). The Magistrate Judge then proceeded to review each of Plaintiff's allegations, finding first that the ALJ's rejection of the opinions of treating physicians Lekson and Plunkett was supported by good reasons, and the ALJ's determination was supported by substantial

evidence (Id.). The Magistrate Judge specifically noted that Dr. Lekson's opinion that Plaintiff was limited to sedentary work with extreme limitations was inconsistent with the record as a whole, and unsupported by objective medical evidence (Id.). The Magistrate Judge indicated the ALJ noted that Plaintiff had worked for many years at heavy exertional jobs long after he injured and re-injured his back (Id.). As for Dr. Plunkett's opinion, the Magistrate Judge found the ALJ did not completely reject it, but that she simply did not find objective medical evidence to support his prognosis and limitations (Id.). For the same reason, the lack of objective evidence, the ALJ found Plaintiff's statements concerning the severity, intensity, persistence, and limiting effects of his symptoms were not credible (Id.). The Magistrate Judge found the ALJ's credibility assessment supported by substantial evidence (Id.). As such, the Magistrate Judge recommended that the Defendant's decision denying DIB and SSI to Plaintiff be found supported by substantial evidence, that such decision be affirmed, and that this case be closed (Id.).

### **III. Discussion**

The Court's "review is limited to determining whether there is substantial evidence in the record to support the findings." Duncan v. Secretary of Health & Human Servs., 801 F.2d 847, 851 (6th Cir. 1986). Having reviewed and considered this matter de novo, and noting that Plaintiff filed no objections, the

Court finds the Magistrate Judge's Report and Recommendation thorough and well reasoned. The Court therefore adopts and affirms in all respects the opinions expressed in the Report and Recommendation, (doc. 22).

Despite Plaintiff's contentions to the contrary, the Court finds the ALJ's analysis and discussion of Plaintiff's physical limitations supported by substantial evidence. Moreover, the ALJ's opinion concerning the credibility of a plaintiff is due great deference by a reviewing court. See Felisky v. Bowen, 35 F.3d 1027, 1036 (6th Cir. 1994). Here, the Commissioner's decision is supported by substantial evidence, falls within his "zone of choice," and therefore must be affirmed. Mullen v. Bowen, 800 F.2d 535, 545 (6th Cir. 1986), Kirk v. Secretary of Health and Human Servs., 667 F.2d 524, 535 (6th Cir. 1981).

#### **IV. Conclusion**

In summary, the Court finds the ALJ's decision to deny Plaintiff benefits supported by substantial evidence in the record, and as such, such decision falls within the zone of discretion within which the Commissioner may proceed without judicial interference. Mullen, 800 F.2d at 545. Subsequent to de novo review of this matter, pursuant to Title 28 U.S.C. § 636, the Court finds the Magistrate Judge's Report and Recommendation thorough, well-reasoned, and correct. Therefore, the Court ADOPTS the Magistrate Judge's Report and Recommendation (doc. 22), AFFIRMS the

Magistrate Judge's Recommendation (Id.), ENTERS judgment in favor of the Defendant Commissioner, and DISMISSES this case from the docket of the Court.

SO ORDERED.

Date: March 23, 2011

/s/ S. Arthur Spiegel

S. Arthur Spiegel

United States Senior District Judge