

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

CHRISTOPHER L. DETTY,

Plaintiff,

vs.

**Case No.: 2:15-cv-637
JUDGE GEORGE C. SMITH
Magistrate Judge Kemp**

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

ORDER

On January 26, 2016, the United States Magistrate Judge issued a *Report and Recommendation* recommending that Plaintiff's statement of errors be overruled and that judgment be entered in favor of the Defendant, the Commissioner of Social Security. (*See Report and Recommendation*, Doc. 21). This matter is now before the Court on Plaintiff's Objections to the Magistrate Judge's *Report and Recommendation*. (Doc. 22). The Court will consider the matter *de novo*. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3).

Plaintiff's objections primarily restate the arguments he previously asserted in the Statement of Errors. However, Plaintiff also asserts that the Magistrate Judge should have done further analysis after finding that the ALJ's mischaracterization of the Vocational Expert's testimony was harmless error. Plaintiff states that the "Magistrate should have determined whether the wider *Hall v. Bowen* analysis was undermined by the ALJ's mistake here." (Pl.'s Objs. at 2, Doc. 22). Plaintiff appears to be expanding an argument not fully developed in his Statement of Errors, that the Magistrate Judge and the ALJ erred by not considering the "types of

work” available. Plaintiff then asserts that rather than substituting its own analysis, the Court should remand this claim to the ALJ to make a decision which reflects the Vocation Expert’s actual testimony.

Counsel for the Commissioner of Social Security responds that Plaintiff has failed to show that the Magistrate Judge or the ALJ erred by not conducting any further analysis, and to the extent Plaintiff is raising a new argument not addressed in his Statement of Errors, such argument should be deemed waived. (Defs’ Response at 2-3, Doc. 23).

The Court has carefully considered all of Plaintiff’s argument raised in his Statement of Errors and the Objections to the Magistrate Judge’s *Report and Recommendation*. The Court agrees with the Magistrate Judge’s analysis of the issues raised. The ALJ did note that the parking lot attendant jobs cited by the Vocational Expert “constituted a significant number of jobs existing in the economy within the parameters of *Hall v. Bowen*, 837 F.2d 272 (6th Cir. 1988) (Tr. at 33, Doc. 8). The regulations explain that “[w]ork exists in the national economy when there is a significant number of jobs (in one or more occupations) having requirements which you are able to meet with your physical or mental abilities and vocational qualifications.” 20 C.F.R. § 416.966(a) – (b). The Vocational Expert testified that there were 3,634 jobs in the state of Ohio and 138,202 jobs national that Plaintiff could perform based on his own vocational profile, residual functional capacity, and factual situation. (Tr. at 76-77, Doc. 8). Accordingly, Plaintiff has failed to establish an error by the ALJ or the Magistrate Judge in finding that the Plaintiff would be able to perform a significant number of jobs in the state and national economy.

Based on the aforementioned and the detailed *Report and Recommendation*, the Court finds that Plaintiff's issues, and his specific objections, have been thoroughly considered. Accordingly, the *Report and Recommendation*, Document 21, is **ADOPTED** and **AFFIRMED**. Plaintiff's Objections are hereby **OVERRULED**. Plaintiff's Statement of Errors are hereby **OVERRULED**, and the decision of the Commissioner of Social Security is **AFFIRMED**.

The Clerk shall remove Document 21 from the Court's pending motions list, and enter final judgment in favor of Defendant, the Commissioner of Social Security.

IT IS SO ORDERED.

/s/ George C. Smith
GEORGE C. SMITH, JUDGE
UNITED STATES DISTRICT COURT