IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

MICHAEL C. BUFFINGTON, JR.,	)	No. 3:10-CV-06346-HU
Plaintiff,	)	
v.	)	**OPINION AND ORDER ADOPTING FINDINGS & RECOMMENDATION**
MICHAEL J. ASTRUE, Commissioner of Social Security,	)	
Defendant.	)	

SIMON, District Judge.

On February 27, 2012, Magistrate Judge Dennis Hubel issued Findings and Recommendation (#20) in the above-captioned case. Judge Hubel recommended that the Commissioner's decision be reversed and remanded for further proceedings. On remand, the Administrative Law Judge (ALJ) is to reconsider the opinion of the claimant's treating physician, Jerome Vergamini, and if the opinion is again discounted, to provide clear and convincing reasons for doing so. The ALJ must also include the claimant's concentration, persistence, and pace limitations in the questions posed to the vocational expert (VE), and he or she should also consider including limitations regarding the claimant's absenteeism. Neither party has filed objections to Judge Hubel's findings and recommendation.

Under the Federal Magistrates Act, the court may "accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate." Federal Magistrates Act, 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate's findings and recommendations, "the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.*; Fed. R. Civ. P. 72(b)(3). If, however, no objections are filed, the Magistrates Act does not prescribe any standard of review. In such cases, "[t]here is no indication that Congress, in enacting [the Magistrates Act], intended to require a district judge to review a magistrate's report[.]" *Thomas v. Arn*, 474 U.S. 140, 152 (1985); *see also United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir.) (*en banc*), *cert. denied*, 540 U.S. 900 (2003) (the court must review *de novo* the magistrate's findings and recommendations if objection is made, "but not otherwise").

Although in the absence of objections no review is required, the Magistrates Act "does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard." *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Federal Rule of Civil Procedure 72(b) recommend that "[w]hen no timely objection is filed," the court review the magistrate's findings and recommendations for "clear error on the face of the record."

No party having made objections, this court follows the recommendation of the Advisory Committee and reviews Magistrate Judge Hubel's findings and recommendation for clear error on the face of the record. No such error is apparent. Therefore the court orders that Judge Hubel's Findings and Recommendation (#20) is ADOPTED. The case is REVERSED and REMANDED, pursuant to sentence four of 42 U.S.C. § 405(g), for further proceedings consistent with the findings and recommendation and this opinion.

Dated this 23rd day of March, 2012.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge