

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

KIZALEE NOBLIT,

3:13-cv-00628-HU

Plaintiff,

ORDER

v.

CAROLYN W. COLVIN, Acting  
Commissioner, Social Security  
Administration,<sup>1</sup>

Defendant.

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<sup>1</sup> Carolyn W. Colvin became the Acting Commissioner of Social Security on February 14, 2013. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Carolyn W. Colvin should be substituted for Michael J. Astrue as Defendant in this case. No further action need be taken to continue this case by reason of the last sentence of Section 205(g) of the Social Security Act, 42 U.S.C. § 405.

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**BROWN, Judge.**

Magistrate Judge Dennis J. Hubel issued Findings and Recommendation (F&R) (#21) on July 7, 2014, in which he recommends the Court reverse the decision of the Commissioner and remand this matter to the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g) for further administrative proceedings. Plaintiff filed timely Objections to the Findings and Recommendation. The matter is now before this Court pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b).

**I. Portions of the Findings and Recommendation to which Plaintiff Does Not Object**

Plaintiff does not object to the portions of the Findings and Recommendation in which the Magistrate Judge concluded the ALJ erred by improperly disregarding the testimony of lay-witness

Charlyn Austin. The Court, therefore, is relieved of its obligation to review the record *de novo* as to these portions of the Findings and Recommendation. See *Shiny Rock Min. Corp v. U.S.*, 825 F.2d 216, 218. (9<sup>th</sup> Cir. 1987). See also *Lorin Corp. v. Goto & Co.*, 700 F.2d 1202, 1206 (8<sup>th</sup> Cir. 1983).

Having reviewed the legal principles *de novo*, the Court does not find any error in these portions of the Findings and Recommendation.

## **II. Portions of the Findings and Recommendation to which Plaintiff Objects**

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1). See also *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9<sup>th</sup> Cir. 2003)(*en banc*); *United States v. Bernhardt*, 840 F.2d 1441, 1444 (9<sup>th</sup> Cir. 1988).

Plaintiff objects to the Magistrate Judge's Findings and Recommendation in which the Magistrate Judge recommends this matter should be remanded for further proceedings rather than for an immediate payment of benefits. The Magistrate Judge concluded "the record is not clear as to whether Plaintiff meets or equals Listing 12.05C," and "it is far from clear that the ALJ would be required to find Plaintiff disabled if all the evidence were properly evaluated." F&R at 11. Plaintiff argues the Magistrate Judge's conclusion is incorrect because the Magistrate Judge

failed to address the arguments raised by Plaintiff in her Reply Brief (#20). Accordingly, by their very nature Plaintiff's Objections merely reiterate the arguments in her Reply Brief.

This Court has carefully considered Plaintiff's Objections and concludes they do not provide a basis to modify this portion of the Findings and Recommendation. The Court also has reviewed the pertinent portions of the record *de novo* and does not find any error in the Magistrate Judge's Findings and Recommendation with respect to Plaintiff's First through Fifth Causes of Action.

#### **CONCLUSION**

The Court **ADOPTS** Magistrate Judge Hubel's Findings and Recommendation (#21) and, accordingly, **REVERSES** the decision of the Commissioner and **REMANDS** this matter to the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g) for further administrative proceedings.

IT IS SO ORDERED.

DATED this 15th day of August, 2014.

\_/s/ Anna J. Brown

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ANNA J. BROWN  
United States District Judge