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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TIMOTHY NESMITH,	:	
Plaintiff,	:	**CIVIL ACTION**
	:	**No. 10-4685**
v.	:	
	:	
MICHAEL J. ASTRUE,	:	
Commissioner of the	:	
Social Security Administration,	:	
Defendant.	:	
	:	

ORDER

AND NOW, this 28th day of February 2011, upon careful and independent consideration, the record reveals the Commissioner did not apply correct legal standards and that the record does not contain substantial evidence to support the ALJ's findings of fact and conclusions of law. Therefore, it is hereby **ORDERED** that:

1. The Report and Recommendation [doc. no. 14] is **APPROVED** and **ADOPTED**;
2. The Commissioner's Unopposed Motion for Remand [doc. no. 13] is **GRANTED**;
3. Plaintiff's Motion for Summary Judgment [doc. no. 8] is **DISMISSED AS MOOT**; and
4. This matter is **REMANDED** to the Commissioner pursuant to the fourth sentence of 42 U.S.C. § 405(g) for further proceedings consistent with this adjudication.

The Court enters final judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure. The Clerk of Court is **DIRECTED** to close this case.

It is so **ORDERED**.

BY THE COURT:

/s/ Cynthia M. Rufe
CYNTHIA M. RUFE, J.

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