

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Joseph Edward Poston,)	
)	C/A No. 1:17-0345-MBS
Plaintiff,)	
)	
vs.)	
)	ORDER
Nancy A. Berryhill, Acting Commissioner)	
of Social Security,)	
)	
Defendant.)	
_____)	

Plaintiff Joseph Edward Poston filed the within action on February 6, 2017, seeking judicial review of a final decision of Defendant Commissioner of Social Security denying Plaintiff’s claims for disability insurance benefits.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Shiva V. Hodges for pretrial handling. On November 13, 2017, the Magistrate Judge issued a Report and Recommendation in which she observed she could not determine whether the Commissioner’s decision is supported by substantial evidence. Specifically, the Magistrate Judge found that the administrative law judge (ALJ) (1) failed to review a medical source statement from Nailah Roland, M.D., which statement constituted new evidence that pertained to the relevant period; (2) failed to review the entire case record and weigh relevant factors in 20 C.F.R. § 404.1527(c) and § 419.92(c) with respect to according the appropriate weight to the opinion of John Bennett Martinie, M.D.; and (3) failed to consider whether Plaintiff’s ongoing medical treatment and pain would affect Plaintiff’s ability to stay on task and complete a normal workday and workweek. For these reasons, the Magistrate Judge also determined that the ALJ should reconsider Plaintiff’s credibility in light of the entire record, including Dr. Roland’s opinions and other new evidence. The Magistrate Judge recommended that the matter be reversed and remanded for further

administrative proceedings. Plaintiff filed no objections to the Report and Recommendation. On November 22, 2017, the Commissioner filed a Notice of Not Filing Objections to the Report and Recommendation of the Magistrate Judge.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

The court has carefully reviewed the record and concurs in the recommendation of the Magistrate Judge. The court adopts the Report and Recommendation and incorporates it herein by reference. The case is **reversed** pursuant to sentence four of 42 U.S.C. § 405(g) and **remanded** to the Commissioner for further consideration as set forth herein and in the Report and Recommendation.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
Senior United States District Judge

Columbia, South Carolina
December 6, 2017