

United States District Court
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

TODD MATTHEW SCHOENFELD,
 Plaintiff

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V.

COMMISSIONER OF SOCIAL
 SECURITY ADMINISTRATION,
 Defendant

CASE NO. 4:14CV271
 Judge Mazzant/Judge Bush

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On February 29, 2016, the report of the Magistrate Judge (Dkt. #17) was entered containing proposed findings of fact and recommendations that the decision of the Administrative Law Judge (“ALJ”) be AFFIRMED.

On March 1, 2016, Plaintiff filed objections to the Magistrate Judge’s report (*see* Dkt. #18), objecting to his recommendation to affirm the ALJ decision.

The Court has made a *de novo* review of the objections raised by Plaintiff and is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and the objections are without merit as to the ultimate findings of the Magistrate Judge.

Plaintiff first objects to the Magistrate Judge’s finding that new evidence submitted after the ALJ decision did not require the Appeals Council to grant a review of the ALJ’s decision. *See* Dkt. #18. Plaintiff contends that the Appeals Council is expressly required to consider “new and material” evidence if it relates to the period before the ALJ’s

decision. *Id.* at 3. However, as the Magistrate Judge noted, the Appeals Council is required to grant review only if it finds that the ALJ decision “is contrary to the weight of the evidence currently of record.” *Matthews v. Apfel*, 239 F.3d 589, 592 (3d Cir. 2001). Here, the Magistrate Judge addressed the Appeals Council decision. He noted that the Appeals Council considered the additional material provided by Plaintiff and found that it did not provide a basis for changing the ALJ decision and that most of the new evidence related to a later time period and thus was not relevant. The Magistrate Judge also noted that some of the new evidence was consistent with the ALJ decision. Although Plaintiff suggests that here the Magistrate Judge offered “an impermissible medical opinion” (*see* Dkt. #18 at 6), the Court disagrees. Rather, the statement simply reflects the Magistrate Judge’s consideration of the new evidence submitted by Plaintiff. Accordingly, the Court finds no error in the Magistrate Judge’s findings related to the Appeals Council’s consideration of the new evidence.

Plaintiff next objects that the Magistrate Judge failed to address the ALJ’s credibility finding. As the Magistrate Judge noted, judgment as to the credibility of subjective complaints is the province of the ALJ. *See Carrier v. Sullivan*, 944 F.2d 243, 247 (5th Cir. 1991). Judicial review of the Commissioner’s final decision is limited to two inquiries: whether the decision is supported by substantial evidence in the record and whether the evidence was evaluated under the proper legal standard. *Greenspan v. Shalala*, 38 F.3d 232, 236 (5th Cir. 1994). The Magistrate Judge’s report specifically addresses the ALJ’s credibility finding and found that it was supported by substantial evidence. The Court thus finds no basis to Plaintiff’s argument.

Therefore, the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of this court.

It is therefore ORDERED that the decision of the Administrative Law Judge is AFFIRMED.

IT IS SO ORDERED.

SIGNED this 16th day of March, 2016.


AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE