

**IN THE UNITED STATES DISTRICT COURT
OF THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

DONNA L. WATSON

§

VS.

§

CIVIL ACTION NO. 5:07cv119

**COMMISSIONER OF SOCIAL
SECURITY ADMINISTRATION**

§

MEMORANDUM ORDER

The above-entitled and numbered civil action was heretofore referred to United States Magistrate Judge Caroline M. Craven pursuant to 28 U.S.C. § 636. The Report of the Magistrate Judge which contains her proposed findings of fact and recommendations for the disposition of such action has been presented for consideration. Plaintiff filed objections to the Report and Recommendation. The Court conducted a *de novo* review of the Magistrate Judge's findings and conclusions.

Plaintiff objects to the Magistrate Judge's recommendation that Plaintiff's above-entitled and numbered social security cause of action be affirmed. Specifically, Plaintiff asserts the Administrative Law Judge ("ALJ") failed to ask the vocational expert any hypothetical questions. Plaintiff further asserts the Report and Recommendation does not recognize the importance of Plaintiff's subjective complaints. Plaintiff states, among other things, the Magistrate Judge failed to properly consider Plaintiff's diagnoses of essential hypertension and disorders of back along with coronary artery disease as well as the echocardiogram performed in May 2004.

Utilizing Plaintiff's testimony from the December 12, 2006 hearing, the Magistrate Judge outlined Plaintiff's subjective complaints on pages 13-14 of the Report and Recommendation. On page 12 of the Report and Recommendation, the Magistrate Judge specifically noted that a Disability

and Determination Transmittal report dated May 19, 2005 provides a primary diagnosis of “essential hypertension” and a secondary diagnosis of “disorders of back (discogenic and degenerative).” The Magistrate Judge further noted a Disability and Determination Transmittal report dated September 13, 2005 which provides a primary diagnosis of “coronary artery disease” and a secondary diagnosis of “disorders of back (discogenic and degenerative).” Contrary to Plaintiff’s objections, the Magistrate Judge properly noted the results of the May 2004 echocardiogram on page 17 of the Report and Recommendation.

Finally, the Magistrate Judge considered the fact that the ALJ did not present a hypothetical question to the vocational expert and properly held that the ALJ is not required to utilize vocational testimony when a claimant is found able to perform her past work. Here, the ALJ properly found that Plaintiff retained the ability to perform her past sedentary work. *See* Report and Recommendation at pg. 19.

After reviewing the transcript, the briefs of the parties, and the Report and Recommendation, the Court finds Plaintiff’s objections are without merit. The Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct. Therefore, the Court hereby adopts the Report of the United States Magistrate Judge as the findings and conclusions of this Court. Accordingly, it is hereby

ORDERED that the above-entitled Social Security action is **AFFIRMED**.

SIGNED this 27th day of February, 2009.



DAVID FOLSOM
UNITED STATES DISTRICT JUDGE