

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

WILLIAM CARL CANNON, JR. §

VS. § **CIVIL ACTION NO. 5:09cv94**

**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 he has suffered from chronic obstructive pulmonary disorder ("COPD"), shortness of breath, and lung disease since 1983, and the Administrative Law Judge ("ALJ") erred by failing to evaluate Plaintiff's COPD during the relevant time period in his evaluation of Plaintiff's ability to perform basic work activities. According to Plaintiff, his inability to breathe normally significantly limits his ability to perform basic work activities. Plaintiff further asserts the ALJ erred in failing to utilize the services of a medical advisor.

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 agrees with the Magistrate Judge


that given the lack of medical evidence during the relevant time period of Plaintiff's alleged impairments, the ALJ properly declined to find that any of Plaintiff's alleged disabling conditions were medically determinable severe impairments. Because the ALJ properly found Plaintiff not disabled at step two of the sequential evaluation process, the ALJ was not required to call a vocational expert. Nor did the ALJ err in not using a medical advisor. Finally, although Plaintiff contends the ALJ erred because he did include his COPD in the evaluation of his ability to perform basic work activities, the Magistrate Judge correctly held the ALJ properly developed the record regarding all of Plaintiff's impairments, including his non-exertional limitations.

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**.

It is SO ORDERED.

SIGNED this 30th day of March, 2012.



MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE