

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

BELINDA HAZELWOOD §
v. § CIVIL ACTION NO. 6:12-CV-874
COMMISSIONER, SOCIAL SECURITY §
ADMINISTRATION

ORDER ADOPTING REPORT AND
RECOMMENDATION OF UNITED STATES
MAGISTRATE JUDGE

The Report and Recommendation of the Magistrate Judge, which contains his findings, conclusions, and recommendation for the disposition of this action, has been presented for consideration. The Report and Recommendation recommends that the decision of the Commissioner be affirmed and the complaint be dismissed. Plaintiff has filed written objections.

Having made a *de novo* review of the objections filed by Plaintiff, the Court finds that the findings, conclusions and recommendation of the Magistrate Judge are correct. Plaintiff contends in her objections that the ALJ and the Report of the Magistrate Judge incorrectly determined there was no error in the assessment of Plaintiff's credibility. The Magistrate Judge's Report fully addresses this issue. As the Magistrate Judge pointed out, the ALJ did not entirely reject Plaintiff's allegations. SSR 96-7p, 1996 WL 374186, at *4 (the adjudicator need not totally accept or totally reject the claimant's statements).

The ALJ incorporated Plaintiff's testimony into its assessment by finding that Plaintiff could perform only light exertional activity that included only occasional climbing of ladders, ropes, or scaffolds. *See* Tr. at 16. Therefore, despite Plaintiff's contention otherwise, the ALJ considered her testimony and used it to establish Plaintiff's residual functional capacity. Considering Plaintiff's subjective reports together with the medical findings from the adjudicated period, the Magistrate

Judge properly found that the ALJ correctly determined that Plaintiff's statements concerning the intensity, persistence, and limiting effects of her symptoms were not entirely credible. *See* Tr. at 16-17.

Plaintiff also objects to the Report of the Magistrate Judge on the grounds that treating physician, James Michaels, M.D., diagnosed her with myofascial pain syndrome and that the Magistrate's Report does not adequately address the argument that this condition should have been reflected in the ALJ's determination of disability. The Report of the Magistrate Judge fully addresses this issue. As noted, Plaintiff cites to a particular record at page 511 in the transcript. This record is a progress note from **December 13, 2004**, over four years prior to the adjudicated period in this case. *See* Tr. at 509. At the administrative hearing, Plaintiff amended her alleged disability onset date to February 27, 2009. *See* Tr. at 25. Plaintiff's reference to a 2004 record is misplaced.

Therefore, Plaintiff's objections are without merit and will be overruled. There is substantial evidence in the record supporting the Commissioner's decision. The findings and conclusions of the Magistrate Judge are therefore adopted as those of the Court. In light of the foregoing, it is

ORDERED that Plaintiff's objections are hereby **OVERRULED**. It is further

ORDERED that the decision of the Commissioner is **AFFIRMED** and the complaint is hereby **DISMISSED WITH PREJUDICE**. It is further

ORDERED that any motion not previously ruled on is **DENIED**.

It is SO ORDERED.

SIGNED this 18th day of September, 2014.



MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE