

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

TYLER DIVISION

J.D. GREEN §
v. § CIVIL ACTION NO. 6:14cv681
COMMISSIONER, SOCIAL SECURITY §
ADMINISTRATION

ORDER ADOPTING REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

The Report and Recommendation of the Magistrate Judge, which contains her 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 a written objection to the R & R.

Having made a *de novo* review of the objection filed by Plaintiff, the Court finds that the findings, conclusions and recommendation of the Magistrate Judge are correct. Plaintiff contends in the objection that the ALJ and the Report of the Magistrate Judge incorrectly determined there was no error in the assessment of Plaintiff's credibility. Plaintiff argues that "the Magistrate Judge erroneously concluded that the ALJ's reliance on his determination that Mr. Green is not disabled was a proper ground for finding that Mr. Green was not fully credible". *See* Objections to the R & R at 1; *see* also Report and Recommendations at 7-10.

The Magistrate Judge's Report fully addresses the issue of credibility. 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 work that included only occasional climbing of ladders, ropes, or scaffolds. *See* Tr. at 15. The ALJ further found that Plaintiff could perform light work that required only occasional overhead reaching with the left upper extremity. *See* Tr. At 19. Therefore, despite Plaintiff's contention otherwise, the ALJ considered Plaintiff's 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 his symptoms were not entirely credible. *See* Tr. at 19-22.

Therefore, Plaintiff's objection is 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**.

SIGNED this 24th day of March, 2016.



MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE