

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

LOSSIE BRIDGES

§

§

vs.

§

CIVIL ACTION NO. 6:16cv450

§

**COMMISSIONER, SOCIAL
SECURITY ADMINISTRATION**

§

§

**ORDER ADOPTING REPORT AND
RECOMMENDATION OF THE 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 that the complaint be dismissed with prejudice. Plaintiff filed written objections on March 2, 2018.

Having made a *de novo* review of the objection filed by Plaintiff, the findings, conclusions and recommendation of the Magistrate Judge are correct and Plaintiff's objection is without merit. In his objection, Plaintiff asserts that the Report and Recommendation erred in finding that the ALJ's residual functional capacity was not erroneous because the ALJ did not properly consider medical evidence of his inability to work at unprotected heights. Plaintiff raises this argument for the first time in his written objections. In his brief, Plaintiff included a sentence in his cursory medical evidence outline stating that a consultative examiner found that Plaintiff cannot work at unprotected heights,¹ but he did not argue that the ALJ erred by failing to include this limitation.

¹ See Plaintiff's Brief in Support of Appeal for Judicial Review of the Denial of Social Security Benefits, ECF 16, at *3.

As a result, it is inappropriate for the Court to consider this new argument during consideration of the Report and Recommendation. *Cupit v. Whitley*, 28 F.3d 532, 535 n.5 (5th Cir. 1994) (a party's entitlement to *de novo* review does not entitle it to raise issues at that stage that were not adequately presented to the Magistrate Judge), *cert. denied*, 513 U.S. 1163, 115 S.Ct. 1128 (1995).

Plaintiff's written objection lacks merit. The findings and conclusions of the Magistrate Judge are, therefore, adopted as those of the Court. It is

ORDERED that Plaintiff's objection is **OVERRULED**. The decision of the Commissioner is **AFFIRMED** and this Social Security action is **DISMISSED WITH PREJUDICE**. It is further

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

So **ORDERED** and **SIGNED** this **6** day of **March, 2018**.



Ron Clark, United States District Judge