

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

CYNTHIA MORRIS

V.

MICHAEL J. ASTRUE, COMMISSIONER
OF SOCIAL SECURITY

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ACTION NO.4:11-CV-631-Y

ORDER ADOPTING MAGISTRATE JUDGE'S
FINDINGS, CONCLUSIONS, AND RECOMMENDATION

On September 4, 2012, the United States magistrate judge issued his findings, conclusions, and recommendation in this case (“the findings”). In the findings, the magistrate judge recommended that the decision of the Commissioner of the Social Security Administration of the United States (“the commissioner”) denying Plaintiff’s claims for disability insurance benefits be affirmed. The magistrate judge’s order gave all parties until September 18 to serve and file with the Court written objections to his proposed findings.

Plaintiff objected, asking this Court to reject the findings of the magistrate judge, reverse the commissioner’s decision, and remand the case to the commissioner for further proceedings. The commissioner did not respond to Plaintiff’s objections.

The Court notes that portions of the findings include statements of the *Stone*¹ standard in the negative, which adds confusion to this byzantine area of the law: “The *Stone* severity standard does not allow for *any* interference with work ability, not even minimal interference.” (Findings 5, 9.) For clarity, the Court contends that casting the *Stone* standard in positive language would aid in its application: An impairment causing *any* interference with work ability, even minimal interference, is a severe impairment under *Stone*.

With that clarification, the Court agrees with the magistrate judge that the administrative law judge implicitly applied the correct severity standard under *Stone* regarding Plaintiff’s disc protrusions with spondylosis because these impairments were considered after the severity step of the administrative law judge’s disability determination. (Findings 10-14.) The Court also agrees that the administrative

¹*Stone v. Heckler*, 752 F.2d 1099, 1104-05 (5th Cir. 1985).

law judge correctly applied *Stone* in concluding that Plaintiff's chronic lumbar myofascial pain and bilateral cervical radiculitis were not severe impairments. (Findings 14-17 & 14 n.12.) Because the record supports the administrative law judge's severity findings, the Court can presume that he applied the correct *Stone* standard. *See Henderson v. Astrue*, No. 3:10-CV-589-D, 2011 WL 540286, at *8-9 (N.D. Tex. Feb. 15, 2011) (Fitzwater, C.J.). Like the magistrate judge, the Court notes that this is not a prohibited harmless-error analysis because this actually is a conclusion that no error occurred at the severity step of the disability determination. (Findings 11 n.3, 17 n.13.) The remainder of Plaintiff's objections are overruled; thus, the record as a whole supports the administrative law judge's residual-functional assessment.

After reviewing the findings, record, case law, and Plaintiff's objections, the Court ADOPTS the magistrate judge's findings and conclusions as the findings and conclusions of this Court for the reasons stated therein and in this order. Thus, the Court AFFIRMS the commissioner's decision.

SIGNED September 27, 2012.



TERRY R. MEANS
UNITED STATES DISTRICT JUDGE