

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

SID EARL POTEET,	§	
	§	
Plaintiff,	§	
	§	
VS.	§	NO. 4:16-CV-161-A
	§	
NANCY A. BERRYHILL, ACTING	§	
COMMISSIONER, SOCIAL SECURITY	§	
ADMINISTRATION, <sup>1</sup>	§	
	§	
Defendant.	§	

MEMORANDUM OPINION AND ORDER

Came on for consideration the above-captioned action wherein Sid Earl Poteet is plaintiff and the Acting Commissioner of Social Security, currently Nancy A. Berryhill, ("Commissioner") is defendant. This is an action for judicial review of a final decision of the Commissioner denying plaintiff's claim for a period of disability and disability insurance benefits under Title II of the Social Security Act. On May 3, 2017, the United States Magistrate Judge issued his proposed findings and conclusions and his recommendation ("FC&R"), and granted the parties until May 17, 2017, in which to file and serve any written objections thereto. He further ordered that any response

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<sup>1</sup>Nancy A. Berryhill replaced Carolyn W. Colvin as acting commissioner of the Social Security Administration. Therefore, pursuant to Federal Rule of Civil Procedure 25(d), Berryhill is automatically substituted as the party of record.

to objections be filed within seven days of the filing of the objections. On May 17, 2017, the Commissioner filed her objections.<sup>2</sup> Plaintiff has not filed a response to the objections. After a thorough study of the record, the magistrate judge's proposed findings and conclusions, and applicable legal authorities, the court has concluded that the Commissioner's objections have merit and that the recommendation of the magistrate judge should be rejected and the decision of the Commissioner affirmed.

The magistrate judge determined that plaintiff's objections to the Commissioner's decision were without merit except as to the objection that the Administrative Law Judge ("ALJ") erred in failing to solicit evidence that a job of incinerator plant general supervisor existed in significant numbers in the national or regional economy. (The vocational expert who testified gave "incinerator plant general supervisor" as an example of a job plaintiff could perform but was not asked how many of those jobs were available.) The magistrate judge recommended that the decision be reversed and remanded to the Commissioner to make such determination.

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<sup>2</sup>The objections are titled "Defendant's Response to the Findings, Conclusions, and Recommendation of the United States Magistrate Judge."

As pointed out by the Commissioner, the ALJ was not required to state the number of incinerator plant general supervisor jobs available, because the evidence establishes that plaintiff was not disabled. Plaintiff met the criteria under one of the grid rules, Guideline Rule 201.07, to be administratively found "not disabled."<sup>3</sup> The testimony of the vocational expert made clear that plaintiff had readily transferable skills. Because plaintiff retained the residual functional capacity to perform the full range of sedentary work, the ALJ did not have to make findings regarding the number of jobs available. Incinerator plant general supervisor was but one of the jobs in the category of work that plaintiff could perform.

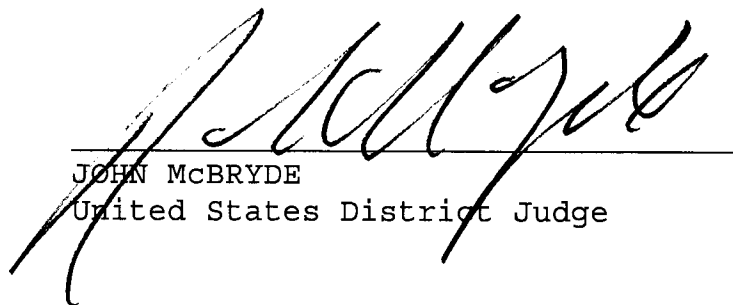
The court rejects the recommendation of the magistrate judge and ORDERS that the decision of the Commissioner that, based on the application for benefits under Title II of the Act filed April 12, 2013, Sid Earl Poteet was not entitled to a period of disability or disability insurance benefits under 42 U.S.C. §§

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<sup>3</sup>That the opinion of the ALJ contained typographical errors and was not the most articulately written does not persuade the court that form should prevail over substance.

416(i) and 423, be, and is hereby, affirmed.

SIGNED May 25, 2017.



JOHN MCBRYDE  
United States District Judge