UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

SAMMY QUINTANILLA,	§	
	§	
Plaintiff,	§	
VS.	§	CIVIL ACTION NO. C-07-277
	§	
MICHAEL J ASTRUE,	§	
	§	
Defendant.	§	

ORDER ADOPTING MEMORANDUM AND RECOMMENDATION REGARDING THE LITIGANTS' CROSS-MOTIONS FOR SUMMARY JUDGMENT

On June 11, 2008, United States Magistrate Judge Brian L. Owsley signed a Memorandum and Recommendation recommending as follows:

1) that the plaintiff's motion for summary judgment (D.E. 20) be granted with respect to his claims that the Administrative Law Judge improperly rejected Dr. Ramirez's medical opinions tending to show disability, that the Administrative Law Judge did not determine plaintiff's credibility pursuant to the applicable law, and that the Administrative Law Judge erroneously failed to make a finding that he was able to maintain employment;

2) that plaintiff's motion for summary judgment (D.E. 20) be denied with respect to his claims that the Administrative Law Judge erred in (a) applying res judicata; (b) not finding him disabled under the grid rules; (c) considering his failure to seek treatment as an adverse credibility factor without finding that his condition responded to treatment; (d) determining he was capable of light exertion; (e) relying on the vocational expert's testimony that the jobs described involved only average stress; (f) failing to incorporate his moderate limitation in social functioning into his question to the vocational expert; and (g) failing to complete the record.

3) that defendant's cross-motion for summary judgment (D.E. 18) be granted with respect to the Administrative Law Judge's application of res judicata, his determination that plaintiff was capable of light exertion, and plaintiff's waiver of objection to the Administrative Law Judge's hypothetical, and denied in all other respects; and

4) this matter be remanded for further proceedings consistent with this memorandum and recommendation.

Seeing no objection to this recommendation by either party and having now reviewed the recommendation, this Court hereby adopts as its own the Memorandum and Recommendation as the decision of the Court. Accordingly, it is ORDERED as follows:

1) the plaintiff's motion for summary judgment (D.E. 20 is granted with respect to his claims that the Administrative Law Judge improperly rejected Dr. Ramirez's medial opinions tending to show disability, that the Administrative Law Judge did not determine plaintiff's credibility pursuant to the applicable law, and that the Administrative Law Judge erroneously failed to make a finding that he was able to maintain employment;

2) plaintiff's motion for summary judgment (D.E. 20) is denied with respect to his claims that the Administrative Law Judge erred in (a) applying res judicata; (b) not finding him disabled under the grid rules; (c) considering his failure to seek treatment as an adverse credibility factor without finding that his condition responded to treatment; (d) determining he was capable of light exertion; (e) relying on the vocational expert's testimony that the jobs described involved only average stress; (f) failing to incorporate his moderate limitation in social functioning into his question to the vocational expert; and (g) failing to complete the record.

3) defendant's cross-motion for summary judgment (D.E. 18) is granted with respect to the Administrative Law Judge's application of res judicata, his determination that plaintiff was

capable of light exertion, and plaintiff's waiver of objection to the Administrative Law Judge's hypothetical, and denied in all other respects; and

4) this matter is remanded for further proceedings consistent with this memorandum and recommendation.

SIGNED and ORDERED this 27th day of June, 2008.

Janis Graham Jack
United States District Judge