

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

KIPPY LEE FARMER,

Plaintiff,

v.

CIVIL ACTION NO. 2:21-cv-00035

KILOLO KIJAKAZI,
Acting Commissioner of Social Security,

Defendant.

MEMORANDUM OPINION AND ORDER

The Plaintiff's *Complaint* (Document 1) in this matter was filed on January 14, 2021. By *Standing Order* (Document 3) entered on January 15, 2021, this action was referred to the Honorable Dwane L. Tinsley, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B).

Previously, on August 6, 2021, Magistrate Judge Tinsley submitted a *Proposed Findings and Recommendation* (Document 7) recommending that the matter be dismissed for failure to prosecute after the Plaintiff did not timely file a brief in support of the complaint and did not respond to an order advising that dismissal would result from continued failure to respond. The Plaintiff objected to the *Proposed Findings and Recommendation* on September 7, 2021. Subsequently, by *Order* (Document 13) entered on October 29, 2021, the Court sustained the

Plaintiff's objections and again referred the matter to Magistrate Judge Tinsley for consideration on the merits.

Pending in the matter are the *Brief by Plaintiff in Support of Appeal and Motion for Remand* (Document 14) filed on October 29, 2021, and the Defendant's *Brief in Support of Defendant's Decision* (Document 15) filed on November 24, 2021.

On August 15, 2022, Magistrate Judge Tinsley submitted a second *Proposed Findings and Recommendation* (Document 16) wherein it is recommended that this Court deny the *Brief by Plaintiff in Support of Appeal and Motion for Remand* (Document 14), grant the Defendant's *Brief in Support of Defendant's Decision* (Document 15), affirm the final decision of the Commissioner, and dismiss this action from the Court's docket. Magistrate Judge Tinsley detailed the inadequacies of the Plaintiff's brief and found he had waived his claims. Magistrate Judge Tinsley alternatively recommends that this Court deny the parties' respective motions without prejudice and order the Plaintiff to file a renewed brief in support of appeal within thirty days. Objections to the Magistrate Judge's *Proposed Findings and Recommendation* were due by August 29, 2022, and none were filed by either party.¹

The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149-50 (1985); *see also Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983) (holding that districts courts may adopt proposed findings and recommendations without explanation in the absence of objections). Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the

¹Objections were due by August 29, 2022, if served electronically, and by September 1, 2022, if served by mail. As of the start of business on September 6, 2022, no objections had been filed.

Magistrate Judge as contained in the August 15, 2022, *Proposed Findings and Recommendation* (Document 16).

With regard to the alternative recommendation suggested by Magistrate Judge Tinsley, that this Court deny the parties' respective motions without prejudice and order the Plaintiff to file a renewed brief in support of appeal with thirty days, the Court declines to proceed in this manner. Magistrate Judge Tinsley thoroughly detailed the procedural history in this matter. In sum, Plaintiff's counsel did not file a timely brief in support of the complaint, did not respond to an order advising that the Magistrate Judge would recommend dismissal absent a response, and filed objections a day after the extended deadline set by this Court. Magistrate Judge Tinsley found that the brief Plaintiff's counsel finally submitted is "wholly devoid of any meaningful argument" and "so fundamentally inadequate that it cannot be said to have been fairly presented to the Court." (PF&R at 28) (internal quotation marks omitted). The Plaintiff filed no objections to the PF&R. Finding no reason to believe extending yet another opportunity for Plaintiff's counsel to submit a brief in compliance with the legal requirements, the Court concludes that dismissal is appropriate.

Wherefore, the Court **ORDERS** that the *Brief by Plaintiff in Support of Appeal and Motion for Remand* (Document 14) be **DENIED**, the Defendant's *Brief in Support of Defendant's Decision* (Document 15) be **GRANTED**, the final decision of the Commissioner be **AFFIRMED**, and that this action be **DISMISSED** from the Court's docket.

Lastly, the Court **ORDERS** that Plaintiff's counsel provide the Plaintiff, Kippy Lee Farmer, with a copy of Magistrate Judge Tinsley's August 15, 2022 *Proposed Findings and Recommendation* (Document 16) and of this *Memorandum Opinion and Order*.

The Court **DIRECTS** the Clerk to send a certified copy of this *Memorandum Opinion and Order* to the Plaintiff (Kippy Lee Farmer, 958 Old River Road, Madison, WV 25130), to counsel of record, to any unrepresented party, and to Magistrate Judge Tinsley.

ENTER: September 6, 2022

A handwritten signature in blue ink, reading "Irene C. Berger", is written over a horizontal line.

IRENE C. BERGER
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA