

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

BECKLEY DIVISION

AUDREY L. SIMMS,

Plaintiff,

v.

CIVIL ACTION NO. 5:07-cv-00790

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

MEMORANDUM OPINION AND ORDER

Plaintiff Audrey Simms brings this action under 42 U.S.C. §§ 401-433, seeking review of the Commissioner of Social Security's final decision denying Plaintiff's application for Disability Insurance Benefits (DIB) under Title II of the Social Security Act. By Standing Order entered on August 1, 2006, and filed in this case on December 6, 2007, this action was referred to United States Magistrate Judge R. Clarke VanDervort for submission of proposed findings and a recommendation (PF&R) pursuant to 28 U.S.C. § 636(b)(1)(B). Magistrate Judge VanDervort filed his PF&R on February 27, 2009 [Docket 14]. In that filing, the magistrate judge recommended that this Court deny Plaintiff's Motion for Judgment on the Pleadings [Docket 12], grant Defendant's Motion for Judgment on the Pleadings [Docket 13], affirm the final decision of the Commissioner, and dismiss this action from the Court's docket.

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. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). In addition, failure

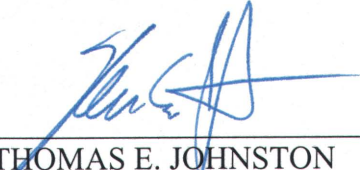
to file timely objections constitutes a waiver of de novo review and Plaintiff's right to appeal this Court's Order. *Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge VanDervort's PF&R were due by March 16, 2009, pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b). To date, no objections have been filed.

Having reviewed the PF&R [Docket 14] filed by Magistrate Judge VanDervort, the Court **ADOPTS** the recommendations contained therein, **DENIES** Plaintiff's Motion for Judgment on the Pleadings [Docket 12], **GRANTS** Defendant's Motion for Judgment on the Pleadings [Docket 13], **AFFIRMS** the final decision of the Commissioner, and **DISMISSES** this action from the Court's docket. A separate Judgment Order will enter this day implementing the rulings contained herein.

IT IS SO ORDERED.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: March 23, 2009



THOMAS E. JOHNSTON
UNITED STATES DISTRICT JUDGE