

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JOHN BERGER,

Plaintiff,

v.

JO ANNE BARNHART,
COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

ORDER

06-C-0256-C

In a report and recommendation entered on November 7, 2006, United States Magistrate Judge Stephen L. Crocker recommended that the court affirm the decision of defendant Jo Anne Barnhart to deny an award of disability insurance benefits to plaintiff John Berger. Plaintiff has filed objections to the report and recommendation. He contends that the magistrate judge erred in finding that the administrative law judge reached the right result and in explaining the reasons for the result he reached. From my review of the magistrate judge's report, the briefs and the record, I am satisfied that neither the defendant commissioner nor the magistrate judge erred in finding that the administrative law judge had reached the right decision, despite some mistakes and omissions along the way.

Defendant's objections focus on the mistakes made by the administrative law judge in his evaluation of the record. All of these omissions and misstatements were taken into account by the magistrate judge, who found that most of them related to matters that were not critical to the administrative law judge's decision and that none of them called the final decision into question. In evaluating the entire record, the magistrate judge explained why the administrative law judge's ultimate decision stands up to scrutiny.

As the magistrate judge determined, the administrative law judge's misapprehension of plaintiff's medical condition as it related to surgery did not have a material effect on the administrative law judge's assessment of plaintiff's residual functional capacity. The administrative law judge adopted the opinion of one of the agency's consulting physicians, who concluded that plaintiff could perform only sedentary work requiring no bending, crouching or crawling and only occasional kneeling or climbing ladders or scaffolds. Plaintiff does not argue that the opinion of the consulting physician was wrong; he argues only that the administrative law judge should have given weight to the opinions of two other doctors who had said that plaintiff might have to miss 3 days of work each month. The administrative law judge explained why he had not adopted these opinions. His explanation is supported by the record evidence: no longitudinal treatment records substantiated the doctors' reports and both doctors included disclaimers in their reports to the effect that they did not have physical findings to support their opinions.

Plaintiff's attack on the magistrate judge's adoption of the administrative law judge's evaluation of plaintiff's credibility provides no reason to reject the magistrate judge's recommendation. Despite the administrative law judge's refusal to accept certain facts in the record that supported plaintiff's reports of his pain, he had before him the results of a 1999 functional capacity test and an independent medical examination from January 2000, both of which indicated that plaintiff could perform light work and one of which indicated that he could do so for eight hours a day. Moreover, he noted that plaintiff continued to do sporadic carpentry and construction work that sometimes included climbing a scaffold. Plaintiff's own testimony suggested he could perform sedentary work: he testified that he could complete a four-hour drive with short breaks and that he regularly engaged in activities such as cleaning out the garage, helping in the garden and doing occasional carpentry work. With the opinions of two consulting physicians, the 1999 functional capacity report, plaintiff's continued work as a carpenter, his ability to perform activities requiring exertion, the absence of any exertional limitations imposed on him by his treating physicians and his failure to seek light or sedentary work opportunities, the administrative law judge had sufficient evidence to support his determination of plaintiff's residual functional capacity. He determined that plaintiff could perform sedentary work that required lifting no more than 10 pounds occasionally, sitting six hours in an eight hour day, standing or walking two hours in an eight hour day, no stooping, crouching, crawling or use of ropes, ladders or

scaffolds and only occasional crawling.

ORDER

IT IS ORDERED that the November 7, 2006 recommendation of the United States Magistrate Judge is ADOPTED. FURTHER, IT IS ORDERED that the decision of defendant Jo Anne Barnhart, Commissioner of Social Security, denying plaintiff John Berger disability insurance benefits is AFFIRMED.

Entered this 3d day of January, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge