

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

KENNETH LEE ARMSTRONG,

Plaintiff,

v.

Case No. 3:16-cv-1557-J-34JRK

NANCY A. BERRYHILL, Acting Commissioner
of the Social Security Administration,

Defendant.

ORDER

THIS CAUSE is before the Court on Magistrate Judge James R. Klindt's Report and Recommendation (Doc. 25; Report), entered on February 2, 2018. In the Report, Magistrate Judge Klindt recommends that the Commissioner of Social Security's (the Commissioner's) decision be affirmed. See Report at 4, 20. Plaintiff filed Plaintiff's Objections to Magistrate Judge's Report and Recommendation and Request for Oral Argument (Doc. 26; Objections) on February 16, 2018. The Commissioner has not filed a response to the Objections and the time to do so expired on March 2, 2018. See Rule 72(b)(2), Federal Rules of Civil Procedure; Rule 6.02(a), Local Rules, United States District Court, Middle District of Florida. As such, the matter is ripe for the Court's consideration.

The Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). If no specific objections to findings of fact are filed, the district court is not required to conduct a de novo review of those findings. See Garvey v. Vaughn, 993 F.2d 776, 779 n.9 (11th Cir. 1993; See also 28 U.S.C. § 636(b)(1)). However, the district court must review legal

conclusions de novo. See Cooper-Houston v. Southern Ry. Co., 37 F.3d 603, 604 (11th Cir. 1994); United States v. Rice, No. 2:08-mc-8-FtM-29SPC, 2007 WL 1428615, at *1 (M.D. Fla. May 14, 2007).

The Court has reviewed the Report and the Objections.¹ Upon independent review of the file and for the reasons stated in Judge Klindt's Report, the Court will overrule the Objections, and accept and adopt the legal and factual conclusions recommended by Judge Klindt. Accordingly, it is hereby

ORDERED:

1. The objections set forth in Plaintiff's Objections to Magistrate Judge's Report and Recommendation and Request for Oral Argument (Doc. 26) are **OVERRULED**.
2. The Magistrate Judge's Report and Recommendation (Doc. 25) is **ADOPTED** as the opinion of the Court.

¹ In the Objections, Plaintiff asserts that the Administrative Law Judge ("ALJ") erred in rejecting the testimony of neurologist Dr. Sabow and as a result erred in affirming the ALJ's decision. See Objections at 11. As noted above, the Court is required to review legal findings de novo. See Cooper-Houston, 37 F.3d at 603, 604. A one-time examining consultant is not a treating physician of Plaintiff and, therefore, is "not entitled to deference." McSwain v. Bowen, 814 F.2d 617, 619 (11th Cir. 1987) (citing Gibson v. Heckler, 779 F.2d 619, 623 (11th Cir. 1986)). Moreover, when determining the weight given to physician's opinions "the ALJ is free to reject the opinion of any physician when the evidence supports a contrary conclusion." Oldham v. Schweiker, 660 F.2d 1078, 1084 (5th Cir. Unit B 1981) (citing 20 C.F.R. § 404.1526). Upon de novo review of the record, the Court concludes that Magistrate Judge Klindt's finding that the ALJ properly considered Dr. Sabow's opinion, and that his decision to reject it based on a conclusion that the evidence supported a contrary conclusion are fully supported by the record. See Report at 19. Judge Klindt also properly concluded that Plaintiff failed to establish that the ALJ did not develop a full and fair record.

3. The Clerk of the Court is directed to enter judgment pursuant to sentence four of 42 U.S.C. § 405(g) and § 1383(c)(3) **AFFIRMING** the Commissioner's final decision and close the file.

DONE AND ORDERED in Jacksonville, Florida this 12th day of March, 2018.


MARCIA MORALES HOWARD
United States District Judge

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Copies to:

Counsel of Record