

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HARRISON DIVISION

TAMMY KYLE

PLAINTIFF

v.

CIVIL NO. 08-3009

MICHAEL J. ASTRUE, Commissioner
Social Security Administration

DEFENDANT

MEMORANDUM OPINION

Tammy Kyle (“plaintiff”) brings this action pursuant to 42 U.S.C. § 405(g) seeking judicial review of a decision of the Commissioner of the Social Security Administration (Commissioner) denying her application for disability insurance benefits (“DIB”) and supplemental security income (“SSI”) under the provisions of Titles II and XVI of the Social Security Act. (Doc. 1). On September 9, 2008, the Court Clerk filed an order to show cause why service had not been perfected within the 120 time period allowed by the Rules of Civil Procedure. FED. R. CIV. P. 4(m). On September 10, 2008, counsel filed a response stating that the staff member assisting him with this case had ceased employment with his law firm around the time this case was filed. He was operating under the assumption that service had already been accomplished when, in fact, it had not. On September 11, 2008, this Court granted counsel until September 22, 2008, to perfect service and file proof of service with the court. No further contact with the court was had until October 20, 2008, when counsel forwarded summonses to the Court for issuance. Counsel filed no motion for extension of time, and has provided the Court with no reason for his failure to abide by its September 11, 2008, Order.

Federal Rule of Civil Procedure 4(m) provides as follows:

If a defendant is not served within 120 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without

prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

As previously noted, the Court previously entered both a show cause order and an order directing plaintiff to affect service within a specified time period. Because plaintiff and/or her counsel have failed to provide the Court with good cause for their failure to abide by the Court's September 11, 2008, order, plaintiff's Complaint is hereby dismissed without prejudice to the defendant.

IT IS SO ORDERED this 30th day of October 2008.

/s/ J. Marschewski

HON. JAMES R. MARSCHEWSKI
UNITED STATES MAGISTRATE JUDGE