

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

GREGORY L. DANIELS,

Plaintiff,

vs.

MICHAEL J. ASTRUE,

Defendant.

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Civil Action 08-00399-CG-B

REPORT AND RECOMMENDATION

This action, which is before the Court on Plaintiff Gregory L. Daniels' Motion for Leave to Appeal *In Forma Pauperis* (Doc. 24), was referred to the undersigned for report and recommendation pursuant to 28 U.S.C. § 636(b)(3). Based upon a careful review of Plaintiff's motion, and the case file, the undersigned finds that Plaintiff's appeal is not taken in good faith, and therefore recommends that Plaintiff's motion be denied pursuant to 28 U.S.C. § 1915(a)(3).

Plaintiff, proceeding *pro se*, filed the instant action seeking judicial review of a final decision of the Commissioner of Social Security denying his claim for a period of disability and disability income benefits under Title II of the Social Security Act ("Act"), 42 U.S.C. § 416 et seq. (Doc. 1). According to Plaintiff, he is entitled to disability benefits because he was previously denied disability benefits based on a VA determination that was later revised to grant him 100 percent VA disability. According to

Plaintiff, based on that VA revision, the Commissioner should find him disabled. (Doc. 4 at 1). In support of his claim, Plaintiff submitted various documents including a VA Rating Decision dated February 25, 2002, and a letter from the VA dated March 8, 2002. According to the VA Rating Decision, Plaintiff has a 10 percent service-connected disability, based on diabetes mellitus, type 2, effective March 26, 2001, and a 100 percent disabled service-connected disability, based on PTSD, effective December 13, 1993.

Based upon a review of the record evidence, the undersigned recommended that Plaintiff's claim be dismissed in a Report and Recommendation issued on February 4, 2010. (Doc. 19) In recommending the dismissal of Plaintiff's claim, the undersigned found that the Administrative Law Judge's decision was supported by substantial evidence. The undersigned concluded that March 31, 1992 is the date on which Plaintiff was last insured, and while Plaintiff relied upon VA Rating Decisions dated August 22, 2001 (Doc. 9 at 5), September 6, 2001 (Doc. 9 at 3-4), February 25, 2002 (Doc. 1 at 1-3), and March 8, 2002 (Doc. 1 at 5-8), those documents do not relate to the period in question, but instead relate to a period nearly twenty months *after* the expiration of Plaintiff's insured status. Accordingly, the undersigned determined that because the record is devoid of any evidence that Plaintiff experienced any functional limitations of any sort prior to his date last insured, the Administrative Law Judge's decision was due to be affirmed.

Plaintiff filed an Objection to the Report and Recommendation, and upon consideration, the Report and Recommendation was adopted by District Judge Granada. (Docs. 20, 21, 22). In Plaintiff's Notice of Appeal (Doc. 23), filed on February 25, 2010, he essentially asserts that the decision to deny him disability benefits is unfair in light of his military service and the VA's Rating Decisions.

28 U.S.C. § 1915(a) provides that "[a]n appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith." In making this determination as to good faith, a court must use an objective standard, such as whether the appeal is "frivolous," Coppedge v. United States, 369 U.S. 438, 445, 82 S. Ct. 917, 8 L.Ed. 2d 21 (1962), or "has no substantive merit." United States v. Bottoson, 644 F. 2d 1174, 1176 (5th cir. Unit B May 15, 1981)(per curiam); See also United States v. Wilson, 707 F. Supp. 1582, 1583 (M.D. Ga. 1989), *aff'd.*, 896 F. 2d 558 (11th Cir. 1990).

Applying the foregoing standard, the undersigned opines that Plaintiff's appeal is without a legal or factual basis, and accordingly, is frivolous and not taken in good faith. As set forth in detail in the Report and Recommendation issued on February 4, 2010 (Doc. 19), the record is devoid of any evidence that Plaintiff experienced any functional limitations of any sort prior to his date last insured. In his Notice of Appeal, Plaintiff has not raised any issues reasonably arguable on their merits.

Accordingly, the undersigned recommends that the district court certify that Plaintiff's appeal is not taken in good faith, and deny his Motion for Leave to Appeal *In Forma Pauperis*.

DONE this 1st day of **March, 2010**.

 /S/ SONJA F. BIVINS
UNITED STATES MAGISTRATE JUDGE