

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

GURAL FOSTER

PLAINTIFF

v.

No. 4:10CV01064 JLH-JJV

SOCIAL SECURITY ADMINISTRATION

DEFENDANT

MEMORANDUM AND ORDER

Plaintiff, Gural Foster, filed a Complaint against the Social Security Administration (“SSA”) on July 23, 2010. (Doc. No. 2). His Complaint stems from a Notice of Change in Benefits letter that he received from the SSA on June 30, 2010. (Doc. No. 12, Ex. 1). The letter also explained the steps to take should Mr. Foster disagree with the decision of the SSA (Doc. No. 12, Ex. 1), and that he had a right to appeal the decision within 60 days. (*Id.*).

Based on the record before the Court, Mr. Foster did not appeal this decision with the SSA. The SSA argues that Mr. Foster’s failure to exhaust his administrative remedies deprives this Court of the jurisdiction to hear his case. (Doc. No. 12).

The scope of judicial review of Social Security claims is defined in 42 U.S.C.A. §§ 405(g) and (h) (West 2003). Those statutes provide in part:

Any individual, after any final decision of the Commissioner of Social Security made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such further time as the Commissioner of Social Security may allow. . . . As part of the Commissioner's answer the Commissioner of Social Security shall file a certified copy of the transcript of the record including the evidence upon which the findings and decision complained of are based. The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing.

42 U.S.C.A. § 405(g).

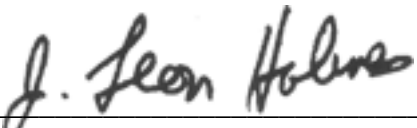
The findings and decision of the Commissioner of Social Security after a hearing shall be binding upon all individuals who were parties to such hearing. No findings of fact or decision of the Commissioner of Social Security shall be reviewed by any person, tribunal, or governmental agency except as herein provided.

42 U.S.C.A. § 405(h).

Since Mr. Foster has not first exhausted his administrative remedies, he does not have a final decision to appeal to this Court. Therefore, this Court is without jurisdiction to hear his Complaint.

IT IS, THEREFORE, ORDERED that Defendant's Motion to Dismiss for Lack of Jurisdiction (Doc. No. 12) is GRANTED, and Mr. Foster's Complaint (Doc. No. 2) is DISMISSED WITHOUT PREJUDICE.

IT IS SO ORDERED this 4th day of January, 2011.



J. LEON HOLMES
UNITED STATES DISTRICT JUDGE