

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

DANIEL EUGENE BROWN

PLAINTIFF

v.

CIVIL NO. 08-2076

MICHAEL J. ASTRUE, Commissioner
Social Security Administration

DEFENDANT

ORDER

On November 21, 2008, defendant filed a motion to dismiss plaintiff's case for failure to prosecute because plaintiff failed to follow the court scheduling order directing plaintiff to file an appeal brief.¹ (Doc. 7). On November 22, 2008, plaintiff responded that due to an error the brief was not filed properly. (Doc. 8). On November 22, 2008, plaintiff also filed a motion for an extension of time to file plaintiff's appeal brief. (Doc. 9). Plaintiff's counsel also filed plaintiff's appeal brief on November 22, 2008. (Doc. 10). On November 24, 2008, defendant filed a motion to withdraw his motion to dismiss. (Doc. 11).

The undersigned finds defendant's motion to withdraw his motion to dismiss is Granted. The undersigned further finds that just cause exists to Grant plaintiff an extension of time to file his brief. The undersigned notes plaintiff's counsel filed plaintiff's appeal brief prior to a ruling on his motion for an extension of time to file. In the future, plaintiff's counsel should refrain

¹The court notes the September 18, 2008, scheduling order states plaintiff's brief was due within 30 days of the filing of the transcript and then states that date would be September 17, 2008. The order should have stated plaintiff's brief was due by October 17, 2008.

from filing a brief out of time until the court grants permission to do so. Defendant's brief will be due by December 23, 2008.

IT IS SO ORDERED this 25th day of November, 2008.

/s/ *J. Marschewski*

HON. JAMES R. MARSCHEWSKI
UNITED STATES MAGISTRATE JUDGE