

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

JERRY D. BATY

PLAINTIFF

v.

CIVIL NO. 11-2250

MICHAEL J. ASTRUE, Commissioner
Social Security Administration

DEFENDANT

ORDER ON MOTION TO REMAND

On December 19, 2011, Plaintiff, Jerry D. Baty, filed a complaint pursuant to 42 U.S.C. § 405(g), seeking judicial review of a decision of the Commissioner of the Social Security Administration ("Commissioner") denying his application for disability insurance benefits pursuant to Title II of the Social Security Act. ECF No. 1. Defendant filed an answer to Plaintiff's action on February 27, 2012, asserting that the findings of the Commissioner were supported by substantial evidence. ECF No. 11.

On May 23, 2012, the Commissioner, having changed positions, filed a motion requesting that Plaintiff's case be remanded pursuant to "sentence four" of section 405(g) in order to conduct further administrative proceedings. ECF No. 14. Specifically, the Commissioner seeks remand to allow the Administrative Law Judge to update the administrative record, reconsider the opinion of Dr. Capocelli, Plaintiff's treating surgeon, and obtain a consultative orthopedic examination, if necessary. ECF No. 14, at 1-2.

The exclusive methods by which a district court may remand a social security case to the Commissioner are set forth in "sentence four" and "sentence six" of 42 U.S.C. § 405(g). A remand pursuant to "sentence six" is limited to two situations: where the Commissioner requests a remand before answering the complaint, or where the court orders the Commissioner to

consider new, material evidence that was for good cause not presented before the agency. The fourth sentence of the statute provides that "[t]he 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. § 405(g); *Shalala v. Schaefer*, 509 U.S. 292, 296, 113 S.Ct. 2625 (1993).

In this instance, the undersigned finds remand, to allow the Administrative Law Judge to further evaluate the evidence, appropriate. Therefore, the Commissioner's motion is granted and the case will be remanded to the Commissioner for further administrative action pursuant to sentence four of Section 405(g).

IT IS SO ORDERED this 8th day of June 2012.

/s/ J. Marschewski

HONORABLE JAMES R. MARSCHEWSKI
CHIEF UNITED STATES MAGISTRATE JUDGE