

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

RANDALL REED

PLAINTIFF

v.

CIVIL NO. 12-2183

MICHAEL J. ASTRUE, Commissioner
Social Security Administration

DEFENDANT

MEMORANDUM OPINION

Presently before this Court is the Defendant's Motion to Dismiss for failure to prosecute his Complaint pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. ECF. No. 8. On October 19, 2012, the undersigned entered a scheduling order directing Plaintiff to file his brief on or before November 19, 2012. Plaintiff failed to file his brief as directed. On December 4, 2012, the Defendant filed a motion to dismiss for failure to prosecute the claim. ECF No. 8. Without first seeking leave of court, Plaintiff then filed his appeal brief on December 8, 2012. ECF No. 10. On December 14, 2012, Plaintiff filed a response to the Defendant's motion to dismiss and a petition for late submission of his appeal brief. Tr. 11, 12.

Plaintiff acknowledges that there is no excuse for his failure to file a timely brief and/or for his failure to request an extension of time to file his brief. He also concedes that if allowed to proceed, he will waive any possible entitlement to attorney fees he may have pursuant to the EAJA.

After considering both the motion and response, the Defendant's motion to dismiss is hereby DENIED. Plaintiff's case will be allowed to proceed. However, Plaintiff waives any and all possible entitlement to attorney fees pursuant to the EAJA, and no such award will be granted. Counsel is also advised that an appeal brief or a motion for an extension of time to file a brief must be filed in all future cases to prevent dismissal for failure to prosecute.

IT IS SO ORDERED this 4th day of January 2013.

/s/ J. Marschewski

HON. JAMES R. MARSCHEWSKI
CHIEF UNITED STATES MAGISTRATE JUDGE