

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
TEXARKANA DIVISION

JAMES SMITH

PLAINTIFF

vs.

Civil No. 4:08-cv-04084

MICHAEL J. ASTRUE,  
Commissioner, Social Security Administration

DEFENDANT

**MEMORANDUM OPINION**

On February 20, 2009, Defendant filed a Unopposed Motion to Remand. (Doc. No. 10).<sup>1</sup> The parties have consented to the jurisdiction of a magistrate judge to conduct any and all proceedings in this case, including conducting the trial, ordering the entry of a final judgment, and conducting all post-judgment proceedings. (Doc. No. 4). Pursuant to this authority, the Court issues this memorandum opinion and orders the entry of a final judgment in this matter.

Defendant requests a remand so the Commissioner may conduct further administrative proceedings and further evaluate Plaintiff's mental status. Defendant requests this remand so the ALJ can obtain an independent consultative psychological evaluation, which should include psychological and intelligence testing and a medical source statement; and if necessary, obtain medical expert testimony and additional vocational expert testimony.

This Court finds this motion is well-taken and should be granted. The Commissioner's decision is reversed, and this matter is hereby remanded pursuant to sentence four of 42 U.S.C. §

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<sup>1</sup> The docket numbers for this case are referenced by the designation "Doc. No." The transcript pages for this case are referenced by the designation "Tr."

405(g) for further proceedings. In addition, the undersigned finds the Plaintiff's Complaint should be and hereby is dismissed without prejudice. Plaintiff may still, however, file a motion for attorney's fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

This Court directs the ALJ to obtain an independent consultative psychological evaluation, which should include psychological and intelligence testing and a medical source statement; and if necessary, obtain medical expert testimony and additional vocational expert testimony.

A judgment incorporating these findings will be entered pursuant to Federal Rules of Civil Procedure 52 and 58.

**ENTERED this 2<sup>nd</sup> day of March, 2009.**

/s/ Barry A. Bryant  
HON. BARRY A. BRYANT  
U.S. MAGISTRATE JUDGE