

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

MICHAEL D. JOHNSON

PLAINTIFF

vs.

Civil No. 4:10-cv-04121

MICHAEL J. ASTRUE
Commissioner, Social Security Administration

DEFENDANT

MEMORANDUM OPINION

Pending now before this Court is Defendant's Motion to Dismiss. ECF No. 6.¹ Plaintiff has not responded to this motion. 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. ECF No. 5. Pursuant to this authority, the Court issues this Memorandum Opinion and orders the entry of a final judgment in this matter.

1. Background:

Defendant filed a Motion to Dismiss alleging Plaintiff's complaint was untimely filed. Defendant states the complaint was not filed within the statutory time limitation of sixty days following the Commissioner's notice to Plaintiff that his request for review was denied. According to Defendant, the Appeals Council denied Plaintiff's request for review on June 14, 2010. ECF No. 7. Defendant states Plaintiff, therefore, should have commenced his civil action on or before August 20, 2010. According to Defendant, this date includes the additional five days for receipt by mail, and two additional days to reach the next non-weekend date. The Complaint in this case was actually filed on August 24, 2010. ECF. No. 1.

¹ The docket numbers for this case are referenced by the designation "ECF. No."

2. Discussion:

The only civil action an individual may bring on any claim arising under Title II or Title XVI of the Social Security Act is an action to review the final decision the Commissioner has made after hearing the case. An individual must commence that action within sixty days after receiving notice of the Commissioner's final decision or within such further time as allowed by the Commissioner. The Commissioner may extend the time for instituting a civil action upon a claimant's request and showing of good cause. *See* 42 U.S.C. 405(g); 20 C.F.R. § 422.210(c).

Plaintiff received notice the Appeals Council denied his request for review on June 14, 2010. ECF No. 6-1, Pg 19. Based on this, Plaintiff should have commenced his civil action on or before August 20, 2010. This date includes the additional five days for receipt by mail and two additional days to reach the next non-weekend date. Plaintiff filed his complaint on August 24, 2010. ECF No. 1. Plaintiff has made no showing that a request for extending the time to file was sought by Plaintiff in this matter. Based on this, the Court finds Plaintiff's complaint was not filed timely and should be dismissed

3. Conclusion:

Based on the foregoing, Defendant's Motion to Dismiss (ECF No. 6) is **GRANTED**. A judgment incorporating these findings will be entered pursuant to Federal Rules of Civil Procedure 52 and 58.

ENTERED this 30th day of November, 2010.

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