

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JEFFREY S. DUNHAM,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting
Commissioner of Social Security,

Defendant.

Case No. 8:16-cv-02154-SHK

SECOND ORDER TO SHOW CAUSE
WHY EAJA FEE PETITION SHOULD
NOT BE DENIED

Plaintiff Jeffrey Dunham (“Plaintiff”) brought this action for judicial review of the Commissioner of the Social Security Administration’s (“Commissioner” or “Agency”) final decision denying his application for disability insurance benefits (“DIB”) under Title II of the Social Security Act (the “Act”). Electronic Case Filing Number (“ECF No.”) 1, Complaint. After the Court reversed the Commissioner’s decision to deny Plaintiff’s DIB application under sentence four of 42 U.S.C. Section 405(g) and remanded the case back to the Agency for further proceedings on November 21, 2017, Plaintiff petitioned the Court for attorney fees, expenses, and costs, totaling \$4,023.44, under the Equal Access to Justice Act (“EAJA”), 28 U.S.C. §§ 1920 and 2412, on February 21, 2018. ECF No. 26,

1 Opinion and Order at 12-13; ECF No. 27, Judgment; ECF No. 28, Plaintiff's
2 Petition for Attorney Fees, Costs, and Expenses Under EAJA ("Petition") at 2-3.

3 On June 6, 2018, the Court ordered Plaintiff to show cause why the Petition
4 should not be denied as untimely, because Plaintiff's Petition was filed ninety-two
5 days after the Court entered final judgment reversing the decision of the
6 Commissioner and remanding the case to the Agency for further administrative
7 proceedings. ECF No. 31, Order to Show Cause ("OSC"). Specifically, the Court
8 found that the thirty-day filing period in 28 U.S.C. § 2412(d)(1)(B) and the sixty-
9 day appeal period in Federal Rule of Appellate procedure ("FRAP") 4(a)(1)(B),
10 which when taken together result in a ninety-day filing deadline, had lapsed by two
11 days when Plaintiff filed his Petition. Id. Thus, because Plaintiff filed his Petition
12 two days after the ninety-day combined filing deadline imposed by 28 U.S.C. §
13 2412(d)(1)(B) and FRAP 4(a)(1)(B), Plaintiff was ordered to show cause why his
14 Petition should not be denied as time-barred. Id.

15 On June 20, 2018, Plaintiff responded to the Court's OSC and argued that
16 the Petition was timely filed. ECF No. 32, Response to OSC. Plaintiff argued the
17 Petition was timely filed because the sixty-day deadline under FRAP 4(a) lapsed on
18 January 22, 2018—a Saturday—and "[t]he sixty days cannot lapse on a Saturday or
19 Sunday (or a Court holiday) because the Court is not open to receive the parties
20 appeal." Id. at 2. Plaintiff added that the sixty-day deadline also "cannot lapse on
21 January 19, 2018 because that would in this case only allow 59 days to appeal." Id.
22 Plaintiff, however, cited no authority whatsoever in support of these arguments.

23 Plaintiff is therefore ordered to show cause within fourteen days—with
24 reasons supported by legal authority—why the Petition should not be denied as
25 untimely. Defendant shall have fourteen days after the date of Plaintiff's response,
26 if any, to file a reply. In its reply, Plaintiff shall cite to any authority that supports
27 his position including any legal authority indicating that this Court retains

28 / / /

1 jurisdiction during the relevant time period.

2 IT IS SO ORDERED.


3

4

DATED: 7/10/2018

5

6



HONORABLE SHASHI H. KEWALRAMANI
United States Magistrate Judge

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28