UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

JIMMY RODRIGUEZ,	1:09-cv-00380 OWW JLT
Plaintiff,	ORDER GRANTING PLAINTIFF'S MOTION FOR RECONSIDERATION (DOC. 30), VACATING ORDER ADOPTING FINDINGS AND RECOMMENDATIONS, VACATING JUDGMENT, AND REOPENING CASE.
v.	
MICHAEL J. ASTRUE, Commissioner of Social Security,	
Defendant.	

Plaintiff Jimmy Rodriguez asserts this action against the Commissioner of Social Security ("Defendant"), seeking review of an administrative decision denying his claims for disability insurance benefits and supplemental security income under Titles II and XVI of the Social Security Act. Plaintiff seeks to challenge the findings of the administrative law judge ("ALJ"), who found Plaintiff's knee impairment was not severe, and that Plaintiff was not compliant with treatment for his diabetes. In addition, Plaintiff alleges he received ineffective assistance of counsel at the administrative hearings, and that the ALJ "prejudged" him at the time of the hearing.

On March 11, 2011, the Magistrate Judge recommended Plaintiff's social security appeal be denied, and that Defendant's motion for summary judgment be granted. Doc. 26. The Magistrate Judge found Plaintiff's contentions of errors at the administrative hearing and by the ALJ were without merit.

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Id. at 16. Further, the Magistrate Judge found the ALJ supported

his determination that Plaintiff's knee injury was not severe

with objective medical evidence, and used proper legal standards

in determining Plaintiff failed to comply with his treatment.

Although Plaintiff was granted 14 days from March 11, 2011,

or until March 25, 2011, to file objections to the Magistrate's

Judges Findings and Recommendations, he did not do so. A March

28, 2011 Order adopted the Findings and Recommendations of the

Magistrate Judge in full. Doc. 28. Plaintiff's appeal was

denied, Defendant's motion for summary judgment was granted, and

the Clerk of Court was directed to enter judgment in favor of

Defendant and against Plaintiff. *Id*. at 4. The case was then

closed.

On March 31, 2011, Plaintiff filed a "Motion for

Reconsideration," claiming that he never received a copy of the

Findings and Recommendations.[1] The docket reveals that the

Findings and Recommendations were served on Plaintiff on March

11, 2011, by U.S. mail. *See* docket entry dated 3/11/2011.

However, Plaintiff claims that he first learned of the Findings

and Recommendations on March 30, 2011, when he received a copy of

the Order Adopting, dated March 28, 2011. *See* Doc. 30. He then

called and spoke with an employee of the Court, who sent him a

copy of the Findings and Recommendations. Plaintiff explains:

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[1] As judgment has already been entered, Plaintiffs' motion also constitutes a
request under Fed. R. Civ. P. 60(b)(6), which permits a court to relieve a
party from a final order or judgment for "any...reason that justifies relief."

"I live in an [apartment] complex, and this is not the first time that I did not receive mail from the Eastern [District] Court[]."
Id.

Although it is not the Court's responsibility to ensure delivery once a document is placed in the U.S. Mail, in an abundance of caution, Plaintiff will be afforded one additional opportunity to file objections to the Findings and Recommendations, a copy of which he now claims to possesses. Any such objections shall be filed within fourteen days of service of this order. No further extensions will be granted.

I. CONCLUSION

For the reasons set forth above:

1. Plaitniff's motion for reconsideration is GRANTED.

2. The Order Adopting the Findings and Recommendations is VACATED.

3. The Clerk of Court is directed to VACATE the Judgment and REOPEN this case.

4. Plaintiff shall have fourteen days from service of this order to file objections to the Findings and Recommendations.

IT IS SO ORDERED.

Dated: __May 19, 2011__   ____/s/ Oliver W. Wanger____
                                            UNITED STATES DISTRICT JUDGE

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