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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DENNIS A. SANCHEZ,)	1:11-cv-00607 GSA
)	
Plaintiff,)	ORDER GRANTING IN FORMA
)	PAUPERIS APPLICATION
v.)	
)	(Document 1)
MICHAEL J. ASTRUE, Commissioner of)	
Social Security,)	ORDER DISMISSING COMPLAINT WITH
)	LEAVE TO AMEND
Defendant.)	
_____)	(Document 3)

INTRODUCTION

Plaintiff Dennis A. Sanchez (“Plaintiff”) filed the instant action on April 15, 2011. Plaintiff also filed an application to proceed in forma pauperis on that same date. Having reviewed the request to proceed without prepayment of the filing fee, this Court GRANTS Plaintiff’s in forma pauperis application.

Plaintiff appears to be challenging a denial of his application for disability benefits under Titles II and/or XVI of the Social Security Act. As discussed below, Plaintiff’s Complaint will be dismissed because it fails to state a claim. However, Plaintiff will be granted leave to file an amended complaint.

1 443, 447 (9th Cir. 2000)), and resolve all doubts in the Plaintiff's favor (*Jenkins v. McKeithen*,
2 395 U.S. 411, 421 (1969)).

3 **B. Plaintiff's Allegations**

4 Plaintiff's Complaint indicates he suffered a shoulder injury and has undergone two
5 surgeries as a result. Plaintiff does not indicate any dates or relevant time periods regarding the
6 injury. He does state that he believes the administrative law judge ("ALJ") "should [have]
7 reviewed [his] medical records better." (Doc. 3 at 1.) Further, Plaintiff indicates that despite the
8 ALJ's finding that he "could work flipping burgers," the ALJ failed to consider the fact that
9 Plaintiff must take pain medication and that "no employer [would] hire" him as a result. (Doc. 3
10 at 1.) Plaintiff concludes by asking for "court review" because he believes "there isn't anyway
11 [he] could or would be able to work" due to "pain medication and depression . . ." (Doc. 3 at 1-
12 2.)

13 **C. Analysis of Plaintiff's Claims**

14 **1. Claim Interpretation**

15 This Court interprets Plaintiff's complaint to assert the following arguments: (1) that the
16 ALJ's determination that Plaintiff is not disabled is not supported by substantial evidence; and
17 (2) the ALJ's residual functional capacity finding is erroneous and is not supported by substantial
18 evidence because the ALJ failed to consider Plaintiff's pain medication and depression. To the
19 degree Plaintiff intended to challenge the denial of benefits on any other basis, he will be given a
20 final opportunity to do so by way of an amended complaint.

21 **2. Timeliness of the Appeal**

22 Rule 12(b)(1) of the Federal Rules of Civil Procedure authorizes dismissal for lack of
23 subject matter jurisdiction. Federal courts are courts of limited jurisdiction and lack inherent or
24 general subject matter jurisdiction. Federal courts can adjudicate only those cases in which the
25 United States Constitution and Congress authorize them to adjudicate. *Kokkonen v. Guardian*
26 *Life Ins. Co.*, 511 U.S. 375, 114 S.Ct. 1673, 1677 (1994); *Finley v. United States*, 490 U.S. 545,
27

1 109 S.Ct. 2003, 2008 (1989). Federal courts are presumptively without jurisdiction over civil
2 actions, and the burden to establish the contrary rests upon the party asserting jurisdiction.
3 *Kokkonen*, 511 U.S. at 377. Lack of subject matter jurisdiction is never waived and may be
4 raised by the court *sua sponte*. *Attorneys Trust v. Videotape Computer Products, Inc.*, 93 F.3d
5 593, 594-595 (9th Cir. 1996). "Nothing is to be more jealously guarded by a court than its
6 jurisdiction. Jurisdiction is what its power rests upon. Without jurisdiction it is nothing." *In re*
7 *Mooney*, 841 F.2d 1003, 1006 (9th Cir. 1988).

8 Judicial review of the Commissioner's administrative decisions is governed by section
9 405, subdivisions (g) and (h), of the Social Security Act, which provides in pertinent part:

10 (g) Any individual, after any final decision of the Commissioner of Social
11 Security made after a hearing to which he was a party, irrespective of the amount
12 in controversy, may obtain a review of such decision by a civil action commenced
13 within sixty days after the mailing to him of notice of such decision or within such
14 further time as the Commissioner of Social Security may allow.

15 (h) The findings and decision of the Commissioner after a hearing shall be
16 binding upon all individuals who were parties to such hearing. No findings of
17 facts or decision of the Commissioner shall be reviewed by any person, tribunal,
18 or governmental agency except as herein provided. No action against the United
19 States, the Commissioner, or any officer or employee thereof shall be brought
20 under section 1331 or 1346 of Title 28 to recover on any claim arising under this
21 subchapter.

22 42 U.S.C. § 405(g). The aforementioned section operates as a statute of limitations setting the
23 time period in which a claimant may appeal a final decision of the Commissioner. *Bowen v. City*
24 *of New York*, 476 U.S. 467, 479 (1986); *Vernon v. Heckler*, 811 F.2d 1274, 1277 (9th Cir. 1987).
25 Because the time limit set forth in Title 42 of the United States Code section 405(g) is a
26 condition on the waiver of sovereign immunity, it must be strictly construed. *Bowen v. City of*
27 *New York*, 476 U.S. at 479; *see also Fletcher v. Apfel*, 210 F.3d 510 (5th Cir. 2000) (affirming
28 summary judgment in favor of Commissioner for untimely filing of one day). "The limitations to
final decisions and to a sixty-day filing period serve to compress the time for judicial review and
to limit judicial review to the original decision denying benefits, thereby forestalling repetitive or

1 belated litigation of stale eligibility claims." *Anderson v. Astrue*, 2008 WL 4506606 *3 (E.D.
2 Cal. Oct. 7, 2008) (Snyder, J).

3 Here, Plaintiff has not provided any dates related to his application or applications for
4 disability benefits and the denials related thereto. Therefore, it is impossible for this Court to
5 determine whether Plaintiff's filing is timely. Plaintiff merely references receiving a "Notice of
6 Appeals Council action that [his] request for a review was denied." (Doc. 3 at 1.)

7 Upon receiving a denial of benefits, a plaintiff has sixty days to file an appeal with the
8 Appeals Council. 20 C.F.R. §§ 404.967, 404.968. When the Appeals Council reviews the case,
9 it will either affirm, modify, or reject the ALJ's recommendation. 20 C.F.R. § 404.979. It may
10 also remand the case. 20 C.F.R. § 404.977. The Appeals Council's decision is binding unless a
11 party files an action in federal district court within sixty days of the Appeals Council's decision.
12 20 C.F.R. §§ 422.210, 404.981. Therefore, Plaintiff must establish that the instant appeal is
13 timely by providing the date of the decision by the Appeals Council. Any amended complaint
14 must establish that the case is properly before this Court and that it is timely.

15 **D. Leave to Amend the Complaint**

16 Although Plaintiff's Complaint contains deficiencies as outlined above, this Court will
17 allow Plaintiff an opportunity to amend the Complaint. If Plaintiff decides to file an amended
18 complaint, he is advised that an amended complaint supercedes the original complaint. *Forsyth*
19 *v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997); *King v. Atiyeh*, 814 F.2d 565, 567 (9th
20 Cir. 1987). Any amended complaint must be "complete in itself without reference to the prior or
21 superceded pleading." Local Rule 220. Plaintiff is warned that "[a]ll causes of action alleged in
22 an original complaint which are not alleged in an amended complaint are waived." *King*, 814
23 F.2d at 567 (citing to *London v. Coopers & Lybrand*, 644 F.2d 811, 814 (9th Cir. 1981)); accord
24 *Forsyth*, 114 F.3d at 1474.

1 **CONCLUSION**

2 For the above reasons, the Complaint filed April 15, 2011, is DISMISSED WITH
3 LEAVE TO AMEND. Plaintiff's amended complaint is due within thirty (30) days of the date of
4 this order. If Plaintiff fails to file an amended complaint, the action will be dismissed for failure
5 to follow a court order.

6
7 IT IS SO ORDERED.

8 **Dated: April 21, 2011**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE

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