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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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| MANUEL GARCIA, |) | Case No.: 1:14-cv-01744 - JLT |
| |) | |
| Plaintiff, |) | ORDER TO PLAINTIFF TO SHOW CAUSE WHY |
| |) | THE ACTION SHOULD NOT BE DISMISSED |
| v. |) | FOR PLAINTIFF’S FAILURE TO EXHAUST |
| |) | ADMINISTRATIVE REMEDIES |
| CAROLYN W. COLVIN, |) | |
| Acting Commissioner of Social Security, |) | |
| |) | |
| Defendant. |) | |
| |) | |
| |) | |

Plaintiff Manuel Garcia is seeking judicial review of a determination of the Social Security Administration. (Docs. 1, 4.) Plaintiff alleged the ALJ issued a decision denying his claim for benefits on July 23, 2014. (Doc. 4 at 4.) According to Plaintiff, “[t]he decision of the ALJ became the final decision of the Commissioner on September 21, 2014.” (*Id.*) However, it is not clear that Plaintiff exhausted his administrative remedies, thereby giving the Court jurisdiction to review the decision of the ALJ pursuant to 42 U.S.C. § 405(g).

The Court’s jurisdiction to review the denial of Social Security benefits is granted pursuant to 42 U.S.C. § 405(g), which provides in relevant part:

Any individual, after any final decision of the Commissioner made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of such decision or within such further time as the Commissioner may allow. Such action shall be brought in the district court of the United States for the judicial district in which the plaintiff resides, or has his principal place of business . . . The court shall

1 have power to enter, upon the pleadings and transcript of the record, a judgment
2 affirming, modifying, or reversing the decision of the Commissioner of Social Security,
with or without remanding the cause for a rehearing.

3 *Id.* (emphasis added). Except as provided by statute, “[n]o findings of fact or decision of the
4 Commissioner shall be reviewed by any person, tribunal, or governmental agency.” 42 U.S.C. § 405(h).

5 The meaning of the term “final decision” in Section 405(g) was left to the Commissioner of
6 Social Security “to flesh out by regulation.” *Weinberger v. Salfi*, 422 U.S. 749, 766 (1975); *see also*
7 *Mathews v. Eldridge*, 424 U.S. 319, 330 (1976) (“[U]nder s 405(g) the power to determine when
8 finality has occurred ordinarily rests with the Secretary”). Pursuant to the Regulations, a claimant
9 obtains the Commissioner’s “final decision” only after completing the administrative review process,
10 which includes: (1) an initial determination, (2) reconsideration, (3) a hearing before an administrative
11 law judge, and (4) review by the Appeals Council. 20 C.F.R. §§ 404.900(a). As a result, the Supreme
12 Court determined judicial review of the denial of benefits is only available to a claimant who has
13 exhausted available administrative remedies, explaining:

14 SSA regulations provide that, if the Appeals Council grants review of a claim, then the
15 decision that the Council issues is the Commissioner’s final decision. But if ... the
16 Council denies the request for review, the ALJ’s opinion becomes the final decision. See
17 20 CFR §§ 404.900(a)(4)-(5), 404.955, 404.981, 422.210(a) (1999). **If a claimant fails**
18 **to request review from the Council, there is no final decision and, as a result, no**
judicial review in most cases. See § 404.900(b); *Bowen v. City of New York*, 476 U.S.
467, 482-483, 90 L. Ed. 2d 462, 106 S. Ct. 2022 (1986). In administrative-law parlance,
such a claimant may not obtain judicial review because he has failed to exhaust
administrative remedies. *See Salfi*, 422 U.S. at 765-766.

19 *Sims v. Apfel*, 530 U.S. 103, 107 (2000) (emphasis added). In other words, “[a] final decision has two
20 elements: (1) presentment of the claim to the Commissioner, and (2) complete exhaustion of
21 administrative remedies.” *Kildare v. Saenz*, 325 F.3d 1078, 1082 (9th Cir. 2003) (citing *Johnson v.*
22 *Shalala*, 2 F.3d 918, 921 (9th Cir. 1993)).

23 Here, although it is clear that Plaintiff meets the presentment requirement, there are no facts
24 alleged supporting a finding that Plaintiff exhausted his administrative remedies by requesting review
25 by the Appeals Council. Further, there are not facts supporting a determination that the exhaustion
26 requirement has been waived by the Commissioner or should be waived by the Court. *See Kildare*, 325
27 F.3d at 1082.

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