

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
EASTERN DISTRICT OF CALIFORNIA

SPENCER ALAN GILBERT,

Plaintiff,

v.

CAROLYN W. COLVIN, Commissioner of
Social Security,

Defendant.

Case No. 1:15-cv-01757- SMS

**ORDER ON STATUS OF CASE AND
DIRECTING PARTIES TO APPEAR FOR
HEARING**

(Doc. 15)

Date: September 14, 2016

Time: 11 a.m.

Location: Courtroom 1, 8th Floor

This matter is before the Court on Plaintiff's letter, dated August 10, 2016. Doc. 15. Based on Plaintiff's statements therein, the Court construed the latter as a request for a status update and explanation. Doc. 15. In his letter, Plaintiff expressed confusion and concern as to why he was not timely apprised of the April 2016 docket activities in this case. Doc. 15, p. 1.

Plaintiff asserts:

[S]ince the serving of papers on the defendant the communication as to the status of my case by the clerk's office has been confusing, to say the least. After being informed that the papers had indeed been served on April 11, 2016, I was told every week for approximately 15 straight weeks that there had not been any other action recorded since April 11, 2016 that was related to my case. But a few minutes after the last weekly call I received a call back . . . and she informed me that she was mistaken and the last action recorded was by the defendant on April 14, 2016. This was definitely cause for concern but the clerk's office employee assured me that the next action would be from the clerk's office and there was no need for me to worry. The following week

1 when I called to check the status of my case I was told that the last
2 action recorded was again an action by the defendant but this time I
3 was informed that it occurred on April 28, 2016. I voiced concern but
4 was again reassured that the next action would be made by the court
5 and since the court had not “issued” anything yet there was no need for
me to worry. But I am still confused as to why the last recorded action
was supposedly in April but I was not made aware of it during any of at
least a dozen weekly phone calls to the clerk’s office.

6 It’s possible that nothing out of the ordinary is taking place and I’m
7 being a bit overly cautious.

8 Doc. 15, p. 1.

9 The Court has reviewed the docket and finds The Clerk’s Office has correctly informed
10 Plaintiff of the relevant dates which reflect activities in this case for the month of April 2016. After
11 service from the United States Marshals, Defendant consented to magistrate judge jurisdiction; this
12 form was filed on April 14, 2016. Thereafter, proof of service of the summons and other relevant
13 documents was returned and filed on April 28, 2016; and therein the U.S. Marshals noted April 11,
14 2016 as the date of service. Plaintiff can be assured that the Court will serve him with a copy of all
15 orders issued in the case as it is the Court’s practice to do so with all parties.
16

17 The Court notes, however, that contrary to the January 12, 2016 scheduling order,
18 Defendant did not serve a copy of the administrative record, which she lodged with the Court, on
19 Plaintiff within one hundred twenty (120) days after service of the first amended complaint.
20 Having been served with the summons and other relevant documents on April 11, 2016, the
21 Commissioner had until August 9, 2016 to “serve a copy of the administrative record on [Plaintiff]
22 and file it with the court,” but failed to do so. Doc. 8, pg. 2. Without proper service, Plaintiff, as a
23 *pro se* litigant, is without knowledge of information regarding the progress of his case. And more
24 importantly, he is without the record necessary to litigate his appeal.
25

26 Mindful of Plaintiff’s *pro se* status and the need to ensure that future progression of this
27 case complies with the Court’s scheduling order, the Court:

- 28 1. **ORDERS** the parties to appear at a hearing scheduled for September 14, 2016,

1 at 11 a.m. in Magistrate Judge Sandra M. Snyder's courtroom. Plaintiff is directed to
2 appear IN PERSON. Defendant may appear IN PERSON or BY TELEPHONE. If
3 Defendant wishes to appear by telephone, she is directed to dial 1-866-590-5055 and use the
4 passcode 5453256; and

- 5 2. ORDERS Defendant to serve Plaintiff a copy of the administrative record and file a
6 separate proof of service reflecting such within fourteen (14) days after service of this order.
7 Paragraphs 3-15 of the January 12, 2016 scheduling order (Doc. 8) remain the same.

8 IT IS SO ORDERED.

9 Dated: August 31, 2016

/s/ Sandra M. Snyder
10 UNITED STATES MAGISTRATE JUDGE
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28