

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

ANTHONY JULIAN BARRAZA, No. CIV S-09-1050-CMK

Plaintiff,

VS.

ORDER

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

Plaintiff, who is proceeding with retained counsel, brings this action for judicial review of the final decision of the Commissioner of Social Security under 42 U.S.C. § 405(g). The court is plaintiff's motion to set aside the court's order of dismissal (Doc. 26).

The court issued an order of dismissal for plaintiff's failure to prosecute (Doc.

24). Plaintiff had been provided several opportunities to file a dispositive motion, which was not filed within the time provided, nor was there any response to the order to show cause the court issued prior to the dismissal order. Counsel asks the court to excuse her neglect in not timely filing the summary judgment motion.

Under Rule 60(b), the court may grant reconsideration of a final judgment and any order based on, among other things: (1) mistake, inadvertence, surprise, or excusable neglect; (2)

1 newly discovered evidence which, with reasonable diligence, could not have been discovered
2 within ten days of entry of judgment; and (3) fraud, misrepresentation, or misconduct of an
3 opposing party. A motion for reconsideration on any of these grounds must be brought within a
4 reasonable time and no later than one year of entry of judgment or the order being challenged.
5 See Fed. R. Civ. P. 60(c)(1).

6 Counsel indicates that her neglect in not filing a timely motion was due to her
7 overwhelming case load. Counsel has since filed the necessary motion for summary judgment,
8 and indicates opposing counsel has no objection to reinstating this case or the late filed brief.

9 The undersigned is not convinced counsel has shown good cause, especially given
10 the numerous opportunities she had to file her motion or seek additional time in which to do so,
11 and her failure to respond to the court's order to show cause. However, the undersigned finds the
12 fault lies with counsel not plaintiff, and it would be an injustice to plaintiff not to grant the
13 request to reinstate this case.

14 Accordingly, IT IS HEREBY ORDERED that:

- 15 1. Plaintiff's motion to set aside the order of dismissal (Doc. 26) is granted;
- 16 2. The Clerk of the Court is directed to reopen this case;
- 17 3. Plaintiff's motion for summary judgment (Doc. 27) is accepted as filed;
- 18 4. Defendant shall file its cross-motion for summary judgement within 45
19 days of the date of this order; and
- 20 5. Plaintiff's reply brief, if any, shall be filed within 20 days of defendant's
21 motion.

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23 DATED: April 5, 2011


24 CRAIG M. KELLISON
25 UNITED STATES MAGISTRATE JUDGE
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