

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
FOR THE EASTERN DISTRICT OF CALIFORNIA

TRACY THOMAS COSTA,
Plaintiff,
v.
CAROLYN W. COLVIN, Acting
Commissioner of Social Security,
Defendant.

No. 2:12-cv-2591-EFB

ORDER

Plaintiff filed the instant action in October 2012, seeking review of a final decision of the Commissioner of Social Security (“Commissioner”) denying her application for a period of disability and Disability Insurance Benefits under Title II of the Social Security Act. ECF No. 1. On March 31, 2014, the court denied plaintiff’s motion for summary judgment, granted the Commissioner’s cross-motion for summary judgment, and entered judgment in the Commissioner’s favor. ECF Nos. 16,17. On June 26, 2014, plaintiff filed a motion for an extension of time to file an appeal pursuant to Federal Rule of Appellate Procedure 4(a)(1)(A).

That rule allows a district court to extend the time to appeal where “(i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and (ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.” Fed. R. App. P. 4(a)(5)(A). “The

1 requirement that motions for extension be filed within thirty days of the original deadline is
2 mandatory and jurisdictional.” *Alaska Limestone Corp. v. Hodel*, 799 F.2d 1409, 1411 (9th Cir.
3 1986).

4 Plaintiff’s motion was timely filed. Judgment was entered on March 31, 2014. ECF No.
5 17. Thus, plaintiff had until May 30, 2014 to file her notice of appeal. *See* Fed. R. App. P.
6 4(a)(1)(B)(iii) (providing that a notice of appeal may be filed within 60 days after the entry of
7 judgment where one of the parties is a United States agency). As plaintiff’s request for an
8 extension of time was filed on June 26, 2014, within 30 days of the deadline prescribed by Rule
9 4(a)(1), the instant motion is timely.¹

10 In determining the question of excusable neglect, a court must consider “(1) the danger of
11 prejudice to the non-moving party, (2) the length of delay and its potential impact on judicial
12 proceedings, (3) the reason for the delay, including whether it was within the reasonable control
13 of the movant, and (4) whether the moving party’s conduct was in good faith.” *Pincay v.*
14 *Andrews*, 389 F.3d 853, 855 (9th Cir. 2004) (citing *Pioneer Investment Services Co. v. Brunswick*
15 *Associates Ltd. Partnership*, 507 U.S. 380, 395 (1993)). Plaintiff has adequately demonstrated
16 good cause and/or excusable neglect. Plaintiff explains that the attorney that represented her in
17 this action retired prior to the court issuing a decision on the parties’ cross-motions for summary
18 judgment. After judgment was entered in this case, plaintiff claims she had difficulty obtaining
19 new counsel due to her medical conditions. ECF No. 19-1.

20 Further, there is little danger of prejudice to the Commissioner and any delay will not
21 adversely impact judicial proceedings as appeal review of this case involves a review of the
22 administrative record filed in this action. Accordingly, this factor also weighs in favor of granting
23 an extension.

24
25 ¹ Federal Rule of Appellate Procedure 4(a)(5)(B) provides that a motion for an extension
26 of time to file an appeal made before the expiration of the time prescribed in Rule 4(a)(1) may be
27 ex parte, but where “the motion is filed after the expiration of the prescribed time, notice must be
28 given to the other parties in accordance with local rules.” The instant motion was filed after the
expiration of the 60 day period prescribed in Rule 4(a)(1)(B). Plaintiff failed to notice the motion
for hearing, but did serve a copy of the motion on the Commissioner. ECF No. 19-7. Although
the Commissioner had adequate time to file a response to the motion, no response was filed.

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

Lastly, there does not appear to be any bad faith on behalf of plaintiff. Upon weighing these factors, the court grants plaintiff's motion for an extension of time to file an appeal.

Accordingly, it is hereby ORDERED that:

1. Plaintiff's request for an extension of time to file an appeal (ECF No. 19) is granted;
- and
2. Within 14 days of the date of this order, plaintiff may file a Notice of Appeal with this court.

DATED: May 18, 2015.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE