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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JO ANNE E. HASELTINE,)
)
Plaintiff,)
)
v.)
)
MICHAEL J. ASTRUE,)
)
Defendant.)
_____)

No. C 08-5782 BZ
**ORDER DENYING PLAINTIFF'S
MOTION TO COMPEL**

Before me is plaintiff's motion to compel the production "of the complete transcript" of the administrative record. While so styled, what plaintiff actually seeks is: (1) production of any analysis or report with respect to his claim of bias raised below and (2) discovery of voluminous extra-record documents such as the records of 200 of Administrative Law Judge ("ALJ") Lazuran's cases. Plaintiff claims to seek all of these documents to prove that ALJs below were biased.

This case has been through numerous proceedings since the first disability determination hearing in 2002. After several appeals and remands, plaintiff filed a civil action in this court, and subsequently, moved for summary judgment. On December 10, 2007, I granted summary judgment in part, finding

1 that there was substantial evidence to support a finding that
2 plaintiff was disabled. I remanded the matter for defendant
3 to fully develop the record and determine the onset date of
4 plaintiff's disability. (Administrative Transcript "AT" 926.)

5 On February 8, 2008, plaintiff sent a letter to the
6 Appeals Council alleging bias on the part of ALJs Lazuran and
7 Reite and requested an "analyst's analysis."¹ (AT 932.) The
8 Appeals Council vacated ALJ Lazuran's decision on the onset
9 date pursuant to the court order. (AT 972.) The Appeals
10 Council found the allegations of bias to be unsupported by the
11 record, but nevertheless granted plaintiff a new hearing in
12 front of a different ALJ. (AT 972.)

13 Plaintiff filed the present action on December 30, 2008.
14 Plaintiff asserts that the administrative record is missing
15 the "analyst's analysis" of the allegations of bias on the
16 part of ALJs Lazuran and Reite. The Social Security
17 Administration's Hearings, Appeals and Litigation Law Manual
18 ("HALLEX") section I-3-1-25 requires that "an agency shall
19 make its determination on the allegation [of bias] a part of
20 the administrative record and decision in the case."

21 In Administrative Appeals Judge ("AAJ") Goldberg's order
22 dated March 28, 2008, AAJ Goldberg stated that plaintiff's
23 request for the analyst's report has been forwarded to the
24 Freedom of Information Act ("FOIA") staff for consideration.
25 (AT 973.) Plaintiff incorrectly interprets this statement as

26
27 ¹ The "analyst's analysis" that plaintiff refers to is
28 a statement issued by a Social Security Administration analyst
determining the validity of any allegations of bias after
examining the record and auditing the hearing recording.

1 the Appeals Council's admission that an "analyst's analysis"
2 exists. Whether an analyst's report was ever created is
3 unclear although there is not one in the record. I have the
4 duty to review the administrative record and ensure that
5 plaintiff has had a fair hearing. Any notes or reports made
6 by the analyst should have been included in the administrative
7 record.

8 On the other hand, extra-record discovery is not
9 appropriate when the court's jurisdiction is to review the
10 administrative record only. McCarty v. Barnhart, No. C04-5060
11 MHP (N.D. Cal. May 5, 2005) (order striking discovery). While
12 there is no authority in this Circuit for allowing discovery
13 in a civil action under § 405(g), the Third Circuit has
14 allowed discovery in very limited circumstances when there are
15 allegations of bias. In the Third Circuit, discovery may
16 occur in the district court when: (1) the alleged bias of the
17 ALJ was discovered post-decision and (2) arose from an
18 extrajudicial source which required further investigation.²
19 Hummel v. Heckler, 736 F.2d 91 (3d Cir. 1984); See also
20 Ventura v. Shalala, 55 F.3d 900, 904 (3d Cir. 1995). In such
21 a case, discovery in the district court would be proper to
22 allow the plaintiff an opportunity to convince the district
23 court that a remand for the taking of new evidence on bias
24 would be appropriate. Grant v. Shalala, 989 F.2d 1332, 1338

26 ² Extrajudicial bias refers to a bias that is not
27 derived from the evidence or conduct of the parties during the
28 proceedings. Johnson v. Trueblood, 629 F.2d 287, 291 (3d Cir.
1980). In Hummel, the allegations of bias were based on an
extrajudicial source, namely the "Bellmon Reviews."

1 (3d Cir. 1993) (citing Hummel, 736 F.2d at 95). Discovery,
2 however, is not necessary when the ALJ's conduct can be
3 evaluated from the hearing transcript or the record. Ventura,
4 55 F.3d at 904.

5 Plaintiff has not established she is entitled to the
6 discovery she seeks. Assuming arguendo that Third Circuit law
7 controls, plaintiff has not shown that (1) the basis of her
8 claims of bias against ALJs Lazuran, Reite, and Teilens was
9 discovered after defendant's decision was made and (2) that
10 the basis stems from an extrajudicial source as in Hummel. To
11 the contrary, plaintiff knew the basis for her claims of
12 alleged bias at the agency level, and asserted them to the
13 Appeals Council, which ultimately found the claims
14 unsupported. (AT 591, 972.) Further, the basis for
15 plaintiff's claims appear to be all interjudicial in nature.
16 Accordingly, plaintiff has not satisfied the requirements of
17 Hummel.

18 ALJs and other similar quasi-judicial administrative
19 officers are presumed to be unbiased. Verduzco v. Apfel, 188
20 F.3d 1087, 1089 (9th Cir. 1999). Plaintiff must rebut this
21 presumption by showing a conflict of interest or some other
22 specific reason for disqualification. Id. Judicial rulings
23 alone almost never constitute evidence of bias. Liteky v.
24 United States, 510 U.S. 540, 555 (1994). Almost invariably,
25 unfavorable rulings are proper grounds for appeal, not
26 allegations of bias. Id. Judicial remarks, even those that
27 express "impatience, dissatisfaction, annoyance and even
28 anger," do not amount to a finding of bias. Id. Plaintiff

1 must show that the ALJ's actions were "so extreme as to
2 display clear inability to render fair judgment." Rollins v.
3 Massanari, 261 F.3d 853, 858 (9th Cir. 2001).

4 Even if discovery was available in an administrative
5 appeal in this Circuit, plaintiff has not made an adequate
6 showing of bias.³ Instead, plaintiff merely disagrees with
7 decisions of the ALJs below. In plaintiff's reply brief, she
8 makes several allegations of bias against ALJs Lazuran, Reite,
9 and Tielens.⁴ Plaintiff claims that ALJ Lazuran is biased
10 because she proffered a stipulation to a later disability
11 onset date and later refused to hold another hearing on the
12 issue. On remand the onset date was found to be valid. Any
13 error ALJ Lazuran may have committed in failing fully to
14 develop the record or in refusing to hold a hearing does not
15 by itself constitute bias in and of itself. Plaintiff also
16 alleges bias on the grounds that ALJ Lazuran failed to provide
17 a speedy decision in two other cases. See Haseltine v.
18 Lazuran, C02-2139 WHA (Doc. No. 1); Pierce v. Barnhardt, C00-
19 0742 BZ. Plaintiff, however, has not made any allegations of
20 an untimely hearing in this case or cited any regulations
21 requiring an ALJ to issue a decision within a certain amount

22
23 ³ In Coleman v. Barnhart, C06-1912 SI (Doc. No. 28),
24 plaintiff's counsel made a similar request for extra-record
discovery that was denied.

25 ⁴ Nowhere is there any explanation as to why this
26 information was not filed in support of plaintiff's motion so
27 that defendant would have had an opportunity to respond.
28 Raising new factual material in the reply is disfavored and I
have attached less weight to it. See Lujan v. National
Wildlife Federation, 497 U.S. 871, 894-95 (1990); Judge William
W. Schwarzer, et al., *Federal Civil Procedure Before Trial*, §
12:107 (Rutter Group 2004).

1 of time. See Coleman v. Barnhart, C06-1912 SI (Doc. No. 28).

2 Plaintiff also claims that ALJs Reite and Tielens are
3 biased because they denied plaintiff's request for testimony
4 from Malcolm Brodzinsky. As already addressed by the Appeals
5 Council, Brodzinsky's testimony was off point and irrelevant.
6 Plaintiff claims that ALJ Reite is biased because he did not
7 respond to plaintiff's letters and referred to plaintiff's
8 representative as incompetent. Failure to respond to a letter
9 is not evidence of bias. The reference to plaintiff's
10 representative as inexperienced was in response to the
11 representative's own assertion that his acceptance of the
12 stipulated onset date was a mistake because he was incompetent
13 and lacked experience at the time the stipulation was entered.

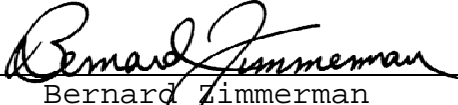
14 Finally, plaintiff claims that ALJ Tielens is biased
15 because he placed plaintiff's representative under oath and
16 thus, deprived plaintiff of adequate representation.

17 Plaintiff's representative was placed under oath because he
18 was testifying about material facts at a prior hearing.

19 Plaintiff also had her attorney present.

20 For the foregoing reasons, **IT IS HEREBY ORDERED** that
21 plaintiff's motion to compel extra-record discovery is **DENIED**.
22 **IT IS FURTHER ORDERED** that by **November 20, 2009** defendant
23 shall file a certification stating whether any analyst's
24 report was ever created. If one does exist, defendant shall
25 produce it by **December 1, 2009**.

26 Dated: October 29, 2009

27 
Bernard Zimmerman
United States Magistrate Judge

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