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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ALISON C. PIERCE,

Plaintiff,

v.

MICHAEL J ASTRUE,  
Commissioner of Social Security,

Defendant.

No. C 09-02713 JSW

**ORDER GRANTING  
DEFENDANT'S MOTION TO  
DISMISS FOR LACK OF  
SUBJECT MATTER  
JURISDICTION**

Now before the Court is the motion of defendant Michael J. Astrue ("Commissioner") to dismiss complaint of plaintiff Alison C. Pierce ("Pierce"). Having carefully reviewed the parties' papers and considered their arguments and the relevant legal authority, and good cause appearing, the Court hereby GRANTS Commissioner's motion.

**BACKGROUND**

Pierce filed for Social Security disability benefits and Supplemental Security Income ("SSI") under the Social Security Act on at least four occasions as follows: (1) May 30, 1990; (2) October 24, 1994; (3) February 26, 1996; and (4) February 23, 1998. (AR at 1251-54.) After a hearing on December 15, 1998, the Administrative Law Judge ("ALJ") denied the last of these applications in an opinion issued on March 22, 1999. (AR at 663-672, 1251-54.) Pierce challenged this decision in district court. (AR at 683-86.) The parties agreed to remand the case, with court permission. (*Id.*) On remand in May 2002, an ALJ made a partially favorable decision, finding that Pierce was disabled as of September 1, 1999. (AR at 12-29.)

1 Pierce appealed this decision again in district court. (AR at 1240-42.)

2 On remand in July 2005, the ALJ issued a partially favorable decision in favor of Pierce,  
3 finding a disability onset date of November 1, 1997. (AR at 1250-57.) The ALJ also declined  
4 to reopen Pierce’s prior SSI applications because Pierce did not establish good cause for  
5 missing the deadlines to request review. (AR at 1252, citing 20 C.F.R. § 416.1487.)

6 In October 2006, the Appeals Council denied Pierce’s request to review the ALJ’s  
7 decision, thereby making the ALJ’s July 2005 decision the administratively final decision of the  
8 Commissioner. (AR at 1056-58.)

9 On June 18, 2009, Pierce filed the instant Complaint against the Commissioner, seeking  
10 judicial review of the Appeals Council’s denial to review the ALJ’s July 2005 decision.  
11 Commissioner now moves pursuant to Federal Rule of Civil Procedure 12(b)(1) for an order  
12 dismissing complaint for lack of subject matter jurisdiction.

13 **ANALYSIS**

14 **A. Legal Standard.**

15 Dismissal is appropriate under Federal Rule of Civil Procedure 12(b)(1) when the  
16 district court lacks subject matter jurisdiction over the claim. Federal subject matter jurisdiction  
17 must exist at the time the action is commenced. *Morongo Band of Mission Indians v. Cal. State*  
18 *Bd. of Equalization*, 858 F.2d 1376, 1380 (9th Cir. 1988). The presumption is that a cause of  
19 action lies outside a federal court’s limited jurisdiction. *Kokkonen v. Guardian Life Ins. Co.*,  
20 511 U.S. 375, 377 (1994). The burden of establishing that subject matter jurisdiction is proper  
21 rests upon the party asserting jurisdiction. *Id.*

22 **B. Defendant’s Motion to Dismiss is Granted.**

23 The Commissioner argues that the Court lacks subject matter jurisdiction of Pierce’s  
24 action seeking judicial review of the Appeals Council’s October 2006 decision not to review the  
25 ALJ’s partially favorable decision. Pierce argues the Court has jurisdiction to review the denial  
26 of her request to reopen.

27 Under the Social Security Act, district courts have jurisdiction to review only “final  
28 decisions” of the Commissioner. 42 U.S.C. § 405(g) (“§ 405(g)”). The United States Court of

1 Appeals for the Ninth Circuit has explicitly held that once a decision to deny benefits becomes  
2 administratively final, the Commissioner’s decision whether to reopen a claim is purely  
3 discretionary. *Taylor v. Heckler*, 765 F.2d 872, 877 (9th Cir. 1985). A discretionary decision is  
4 not a “final decision” for the purposes of judicial review within the meaning of the statute.  
5 *Klemm v. Astrue*, 543 F.3d 1139, 1144 (9th Cir. 2008) (citing *Califano v. Sanders*, 430 U.S. 99,  
6 107-09 (1977)). Therefore, a decision not to reopen a prior decision is not generally subject to  
7 review by a district court. *Id.*

8 In *Taylor*, the plaintiff did not seek reconsideration of a decision to deny her benefits  
9 after notice of the adverse decision and the initial decision became administratively final. 765  
10 F.2d at 876. The Ninth Circuit held that the decision not to reopen her claim was purely  
11 discretionary and not a final decision subject to judicial review in district court. *Id.* at 877.

12 In *Sanders*, the plaintiff applied for and was denied a claim for Social Security disability  
13 benefits in 1964. 430 U.S. at 102. filed a second application in 1973, and the ALJ denied  
14 reopening his previous application and dismissed his claim. *Id.* at 103. The United States  
15 Supreme Court held that the Commissioner’s discretionary decision not to reopen a claim was  
16 not “final” within the meaning of § 405(g), and not subject to judicial review. *Id.* at 108. The  
17 Court held that interpretation which would allow a claimant judicial review simply by filing,  
18 and being denied, a petition to reopen a claim would frustrate the congressional purpose of  
19 imposing a sixty-day limitation upon judicial review of an unfavorable decision on a claim for  
20 benefits. *See id.*

21 Here, Pierce incorrectly argues that this Court has jurisdiction to review the Appeals  
22 Council’s decision pursuant to § 405(g). Here, although the Appeals Council’s denial to review  
23 the ALJ’s decision made the ALJ’s prior decision administratively final, the discretionary  
24 decision not to reopen is not considered a “final decision” subject to judicial review within the  
25 meaning of § 405(g). *See Taylor*, 765 F.2d at 877.

26 Pierce’s additional argument that this Court has jurisdiction to hear her claim because  
27 she initially received defective denial notice of her prior applications is not persuasive. The  
28 Court grants Commissioner’s motion to dismiss because the decision not to reopen is purely

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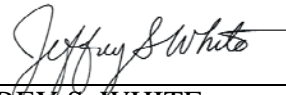
discretionary and not “final” within the meaning of § 405(g) for judicial review, not on the basis of untimeliness.

**CONCLUSION**

For the foregoing reasons, the Court GRANTS the Commissioner’s motion to dismiss and dismisses the complaint for lack of subject matter jurisdiction. The Clerk shall close the file.

**IT IS SO ORDERED.**

Dated: June 10, 2010

  
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JEFFREY S. WHITE  
UNITED STATES DISTRICT JUDGE