

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

STEVEN M. GOLDSTEIN,
Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,
Defendant.

Case No. 5:13-cv-03504 HRL

**ORDER GRANTING DEFENDANT'S
MOTION FOR REMAND AND
DENYING PLAINTIFF'S MOTIONS
FOR REVERSAL ORDER AND
JUDGMENT**

[Re: Dkt. Nos. 23, 25, 31]

Defendant moves for remand pursuant to 42 U.S.C. § 405(g) sentence six, citing the agency's inability to locate the record of the administrative proceedings re plaintiff's claim for benefits. Defendant requests an opportunity to reconstruct the record; or, if the record cannot be reconstructed, then defendant says she will remand the matter to an administrative law judge to reconstruct the record, hold a new hearing, and issue a decision. Plaintiff opposes the motion and separately moves for judgment on the merits, arguing that defendant did not answer his complaint. Upon consideration of the moving and responding papers,¹ the court grants defendant's motion and denies plaintiff's motions.

Given the pendency of defendant's request for remand, it would have made no sense for defendant to proceed to join the issue and file an answer. Plaintiff's motions for a reversal order

¹ Plaintiff filed an unauthorized sur-reply with respect to defendant's remand motion. The court nevertheless has fully considered all of plaintiff's filings.

1 and judgment are denied.


2 Plaintiff contends that remand is not warranted because defendant has cited no new
3 evidence. He is, however, conflating the requirements for the two different types of remand
4 authorized by § 405(g) sentence six. Sentence six remands may be ordered in two situations:
5 “where the Secretary requests a remand before answering the complaint, or where new, material
6 evidence is adduced that was for good cause not presented before the agency.” Shalala v.
7 Schaefer, 509 U.S. 292, 297 n.2, 113 S. Ct. 2625, 125 L.Ed.2d 239 (1993); see also Melkonyan v.
8 Sullivan, 501 U.S. 89, 100 & n.2, 111 S. Ct. 2157, 115 L.Ed.2d 78 (1991) (same); Akopyan v.
9 Barnhart, 296 F.3d 852, 854 (9th Cir. 2002) (same). Only the first type of sentence six remand is
10 at issue here.

11 Moreover, this court finds good cause for defendant’s request. Congress clearly has stated
12 that good cause for remand may be found where difficulties, such as an inaudible hearing tape or
13 lost files, arise. See H.R.Rep. No. 96-944, 96th Cong., 2d Sess. 59 (1980). Plaintiff’s arguments
14 about defendant’s duty to compile an administrative record do not persuade this court otherwise
15 and do not subvert or invalidate Congress’ clearly stated intent. While plaintiff argues that
16 defendant provided meaningful review of his claims at the administrative level, meaningful review
17 by this court is not possible without a proper record.

18 Defendant’s motion for remand therefore is granted. This matter is remanded pursuant to
19 42 U.S.C. § 405(g) sentence six.

20 SO ORDERED.

21 Dated: January 12, 2015

22 
23 _____
24 HOWARD R. LLOYD
25 UNITED STATES MAGISTRATE JUDGE
26
27
28

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

5:13-cv-03504-HRL Notice has been electronically mailed to:

Lynn M. Harada Lynn.Harada@ssa.gov, ODAR.OAO.COURT.1@ssa.gov,
sf.ogc.ndca@ssa.gov

Steven Michael Goldstein GoldyCISSP@hotmail.com