

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Honorable Marcia S. Krieger

Civil Action No. 07-cv-02104-MSK

DONNA L. RITTER,

Plaintiff,

v.

MICHAEL J. ASTRUE, Commissioner of Social Security,

Defendant.

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**ORDER OF REMAND**

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**THIS MATTER** comes before the Court, *sua sponte*. Upon review of the briefing in this matter, it appears that remand is appropriate due to a change in the claimed date of onset of disability.

The Claimant filed her application for disability insurance benefits on January 26, 2005 alleging that she became disabled on **March 1, 2001**. The claim was initially denied, and she requested a hearing which was held on October 6, 2006. The ALJ issued an unfavorable decision on November 13, 2006. It is from such decision that the Claimant now appeals.

In her opening brief, the Claimant states that she now desires to amend the date of onset of her disability to "**November 6, 2006**", a date subsequent to the hearing conducted in this matter and to all evidence considered by the ALJ. Such onset date effectively moots this appeal.

From the text of the brief it appears that Claimant may have intended the new onset date to be **November 6, 2002**, and that her reference to 2006 was a typographical error. However, if

so, the newly alleged onset date is almost two years after the onset date originally claimed. This means the much of the evidence considered by the ALJ may be irrelevant, or may be accorded different weight in the context of the entire record.

This Court cannot conduct a *de novo* review. *Sisco v. United States Dept of Health and Human Services*, 10 F.3d 739 (10<sup>th</sup> Cir 1993). Nor is it free to reweigh the evidence or substitute its judgment for that of the Commissioner. *See: White v. Barnhart*, 287 F. 3d 903 (10<sup>th</sup> Cir 2001); *Qualls v. Apfel*, 206 F. 3d 1368 (10<sup>th</sup> Cir 2000) . Therefore, the matter must be remanded for clarification of the onset date and for reevaluation of the evidence in light of any change.

**IT IS THEREFORE ORDERED** that this matter is **REMANDED** for reconsideration in accordance with this Order. No fees or costs are awarded.

Dated this 27th day of March, 2009

**BY THE COURT:**

A handwritten signature in black ink, reading "Marcia S. Krieger". The signature is written in a cursive style with a horizontal line underneath it.

Marcia S. Krieger  
United States District Judge