

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION

CHARLES B. COOK,
Plaintiff,

v.

Case No.: 5:09cv72/RS/EMT

MICHAEL J. ASTRUE,
Commissioner of Social Security,
Defendant.

REPORT AND RECOMMENDATION

This action was initiated under the Social Security Act to obtain judicial review of the Commissioner's final decision denying Plaintiff's claim for benefits (Doc. 1). Now before the court is the Commissioner's amended motion to remand pursuant to sentence six of 42 U.S.C. § 405(g) (Doc. 12). The Commissioner has certified that Plaintiff has no objection to the motion (*see* Doc. 12 at 1).

Sentence six remands may be granted on the Commissioner's motion before an answer is filed for good cause or, alternatively, upon a showing that there is new, material evidence and good cause for the failure to incorporate such evidence into the record. *See Melkonyan v. Sullivan*, 501 U.S. 89, 100, 111 S. Ct. 2157, 115 L. Ed. 2d 78 (1991) (explaining the difference between sentence four and sentence six remands under 42 U.S.C. § 405(g)). In the instant case, the Commissioner has not yet filed an answer and seeks remand to the Appeals Council in order to complete the administrative record because the Administrative Law Judge failed to prepare a list of exhibits (Doc. 12, Memorandum in Support at 1). Based upon the foregoing, the undersigned believes there is good cause for the requested remand.

Accordingly, it is respectfully **RECOMMENDED**:

1. That the Commissioner's amended motion to remand (Doc. 12) be **GRANTED**.

2 That this cause be **REMANDED** to the Commissioner of the Social Security Administration pursuant to sentence six of 42 U.S.C. § 405(g) for further administrative proceedings in accordance with this Report and Recommendation. As the court retains jurisdiction of this case during the period of remand, judgment should not be entered at this time.

3. That the Commissioner be required to advise the court of the status of these proceedings **SIXTY (60) DAYS** from the date an order adopting this Report and Recommendation is entered and every **FORTY-FIVE (45) DAYS** thereafter.

4. That the clerk be directed to administratively close this file.

At Pensacola, Florida this 15th day of June 2009.

/s/ Elizabeth M. Timothy

ELIZABETH M. TIMOTHY

UNITED STATES MAGISTRATE JUDGE

NOTICE TO THE PARTIES

Objections to these proposed findings and recommendations may be filed within ten days after being served a copy thereof. Any different deadline that may appear on the electronic docket is for the court's internal use only, and does not control. A copy of objections shall be served upon the magistrate judge and all other parties. Failure to object may limit the scope of appellate review of factual findings. *See* 28 U.S.C. § 636; United States v. Roberts, 858 F.2d 698, 701 (11th Cir. 1988).