

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
Urbana Division**

JAMES M. BOONE,)
)
 Plaintiff,)
)
 v.)
)
)
 COMMISSIONER OF SOCIAL SECURITY,)
 sued as Michael J. Astrue,)
)
)
 Defendant.)

Case No. 08-2291

REPORT AND RECOMMENDATION

In response to Plaintiff’s Complaint (#6), Defendant filed a Motion to Dismiss (#11). Plaintiff did not file a written response.

The motion is premised on Plaintiff’s failure to file suit within 60 days of the mailing of the final decision of the Commissioner. A quick look confirms the assertions of the Defendant.

The matter was scheduled before the undersigned on June 18, 2009, to give Plaintiff an opportunity to challenge the motion. Plaintiff did appear and offered a description of his ailments but he did not offer any special circumstances to explain the tardiness of his filing. The Court allowed Plaintiff’s sister, Linda Boone, to make a statement on behalf of Plaintiff. Ms. Boone reported that the Plaintiff regularly loses the mail. She said the reason he was late here was because he had lost the paperwork, which she found and then sent in. It should be noted that Ms. Boone’s statement was not made under oath but was volunteered by her as an explanation for what had taken place.

The undersigned has carefully considered the motion and incorporated authority. The undersigned has further taken into consideration the comments of Mr. Boone and his sister and concluded that the action was not timely filed. Plaintiff did not act within the time allowed by law. He has offered no special circumstances which would excuse his failure to timely file.

Accordingly, I recommend pursuant to authority conferred to me under 28 U.S.C. § 636(b)(1)(B) that Defendant's Motion to Dismiss Plaintiff's Complaint (#11) be **GRANTED** and the case terminated.

The parties are advised that any objection to this recommendation must be filed in writing with the Clerk within ten working days after service of a copy of this recommendation. *See* 28 U.S.C. 636(b)(1). Failure to object will constitute a waiver of objections on appeal. *Video Views, Inc. v. Studio 21, Ltd.*, 797 F.2d 538, 539 (7th Cir. 1986).

ENTER this 23rd day of June, 2009.

s/ DAVID G. BERNTHAL
U.S. MAGISTRATE JUDGE