

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

LARANE DEE HOLCOMB,)	
)	
Plaintiff,)	
)	CAUSE NO. 3:08-CV-321
v.)	
)	
COMMISSIONER OF SOCIAL)	
SECURITY,)	
)	
Defendant.)	

OPINION AND ORDER

This matter is before the Court on Defendant’s Motion to Dismiss or, in the Alternative, Motion for Summary Judgment, filed by the Defendant, Michael J. Astrue, Commissioner of Social Security, on September 24, 2008. For the reasons set forth below, the motion is **GRANTED**. The Clerk is **ORDERED** to **DISMISS** Plaintiff’s complaint **WITH PREJUDICE** and to **CLOSE** this case.

Defendant, Commissioner of Social Security, moved to dismiss this case on the ground that the action is barred by the time limitation specified in section 205(g) of the Social Security Act, 42 U.S.C. § 405(g). Specifically, Defendant argues that Plaintiff failed to commence the action within 60 days after the date notice of the Commissioner’s final decision was mailed to her, nor was the action commenced within any time extended by the Appeals Council of the Social Security Administration.

In her Response, Plaintiff, Larane Holcomb, indicates that after review of the motion and consultation with her counsel, she does not oppose Defendant's motion.

The Court concurs that Plaintiff's case is barred by the sixty day limitation specified in section 205(g) of the Act. The Appeals Council notice of the denial of request for review was dated and mailed to Plaintiff on April 25, 2008 (see Ex. 2). The date of receipt is presumed to be five days after the date of such notice, unless a reasonable showing to the contrary is made to the Appeals Counsel. See 20 C.F.R. §§ 416.1401, 422.210(c). Based on this date, Plaintiff must have filed a civil action on or before June 29, 2008. However, Plaintiff did not file her complaint until July 9, 2008. Because the complaint is untimely and Plaintiff has not put forth any circumstance justifying the extension of the time to file (to the contrary, Plaintiff does not oppose the motion to dismiss), the Court hereby grants the motion.

DATED: May 13, 2009

**/s/RUDY LOZANO, Judge
United States District Court**

