

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
LEXINGTON

AMBER STEWART,
Plaintiff,

V.

KILOLO KIJAKAZI,
Acting Commissioner, Social Security
Administration

Defendant.

CIVIL ACTION NO. 5:21-31-KKC

OPINION AND ORDER

*** **

Plaintiff Amber Stewart moves to remand (DE 10) this matter to the Social Security Administration so that it can be heard before a different administrative law judge (ALJ). In support of this argument, Stewart raises an Appointments Clause Challenge to the ALJ who presided over her administrative hearing. In *Lucia v. S.E.C.*, 138 S.Ct. 2044 (2018), the Supreme Court held that ALJs for the Security Exchange Commission (SEC) must be appointed by the president, a court, or the head of the agency. *Id.* at 2055. The Court held that the proper remedy for the petitioner, whose cases was heard and decided by an ALJ who had not been constitutionally appointed, was a *de novo* hearing before a different and properly appointed ALJ. *Id.*

In the past Social Security ALJs were hired by the Office of Personnel Management. Like SEC ALJs, they were not appointed by the president, a court, or the head of the agency. On July 16, 2018, however, the then-acting commissioner of Social Security ratified the appointments of all Social Security ALJs. This forecloses any Appointments Clause challenges to ALJ decisions after that date. *Ramsey v. Comm'r of Soc. Sec.*, 973 F.3d 537,

539, n.1 (6th Cir. 2020), *cert. denied sub nom. Saul v. Ramsey*, No. 20-1044, 2021 WL 2194849 (U.S. June 1, 2021).

The ALJ conducted the hearing on Stewart's claim and issued its decision long after July 16, 2018. The hearing was April 21, 2020 and the decision was issued on April 29, 2020. (DE 13-1, Decision.) Thus, the ALJ was constitutionally appointed at both the time of the hearing and the decision. Accordingly, the Court hereby ORDERS that Stewart's motion to remand (DE 10) is DENIED.

Dated August 23, 2021



Karen K. Caldwell

KAREN K. CALDWELL
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF KENTUCKY