



*v. Schaefer*, 509 U.S. 292, 297 n.2 (1993). The Plaintiff argues, among other things, that, because the Court ordered additional vocational expert testimony, a sentence-six remand is required. However, the Plaintiff has not identified any material evidence not presented, for good cause, before the ALJ. Moreover, ordering further development of the record is appropriate in the context of a sentence-four remand. *Buckner v. Apfel*, 213 F.3d 1006, 1013 (8<sup>th</sup> Cir. 2000); *Hafner v. Sullivan*, 972 F.2d 249, 250 (8<sup>th</sup> Cir. 1992).

This case does not present the necessary criteria for a sentence-six remand, and the remand is correctly characterized under sentence four. The motion to alter or amend the judgment is denied.

***Stay Proceedings Pending Potential Motion for Attorney Fees***

The Plaintiff moves for a stay regarding the issue of attorney fees. The Plaintiff is correct in arguing that if, on remand, he receives an award of past-due benefits he would be eligible to request attorney fees under the Social Security Act, 42 U.S.C. § 406(b). Because an award of attorney fees under the Social Security Act is determined by the amount of any benefits awarded, Plaintiff's counsel cannot apply for attorney fees at this time, in light of the fact that the remand order did not award benefits. If the Plaintiff receives an award of benefits upon remand, counsel may then file a motion for attorney fees under § 406(b). *Burnett v. Heckler*, 756 F.2d 621, 624 (8<sup>th</sup> Cir. 1985); See, e.g., *Bear v. Astrue*, 4:05CV3283 (D. Neb). The motion is denied as moot.

IT IS ORDERED:

1. The Plaintiff's motion to alter or amend the Judgment (Filing No. 31) is denied; and

2. The Plaintiff's motions to stay (Filing Nos. 28, 30) are denied as moot.

DATED this 9<sup>th</sup> day of June, 2009.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge