

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ROBERT CRAWFORD,
Plaintiff,

vs.

CAROLYN W. COLVIN, Acting Commissioner
of the Social Security Administration,
Defendant.

Case No. 2:16-cv-1725-GMN-VCF

**REPORT & RECOMMENDATION AND
ORDER**

MOTION TO DISMISS (ECF No. 5): MOTION FOR
DEFAULT (ECF No. 11)

Before the court are Colvin’s motion to dismiss (ECF No. 5), Crawford’ response (ECF No. 12), and Colvin’s reply (ECF No. 13). Also before the court are Crawford’s motion for default (ECF No. 11) and Colvin’s response (ECF No. 14). For the reasons stated below, Colvin’s motion to dismiss should be granted, and Crawford’s motion for default is denied.

I. Legal Standard

“If the court determines at any time that it lack subject-matter jurisdiction, the court must dismiss the action.” FED. R. CIV. P. 12(h)(3).

“No findings of fact or decision of the Commissioner of Social Security shall be reviewed by any person, tribunal, or governmental agency except as herein provided.” 28 U.S.C. §405(h). “No action against the United States, the Commissioner of Social Security, or any officer or employee thereof shall be brought under section 1331 or 1346 of Title 28 to recover on any claim arising under this subchapter.” *Id.*

“Any individual, after any final decision of the Commissioner of Social Security made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such

1 decision or within such further time as the Commissioner of Social Security may allow.” 28 U.S.C.
2 §405(g).

3 “When you have completed the steps of the administrative review process listed in paragraphs
4 (a)(1) through (a)(4) of this section, we will have made our final decision” 20 C.F.R. §404.900(a)(5). “If
5 you are dissatisfied with our final decision, you may request judicial review by filing an action in a
6 Federal district court.” *Id.* Steps 1-4 of the administrative review process are as follows: (1) initial
7 determination by the Social Security Administration; (2) reconsideration; (3) a hearing before an
8 administrative law judge; and (4) review by the Social Security Appeals Council. 20 C.F.R.
9 §404.900(a)(1)–(4).

10 “A claimant’s failure to exhaust the procedures set forth in the Social Security Act, 42 U.S.C.
11 §405(g), deprives the district court of jurisdiction.” *Bass v. Social Sec. Admin.*, 872 F.2d 832, 833 (9th
12 Cir. 1989).

13 **II. Discussion**

14 1. The Commissioner’s Motion to Dismiss

15 According to the Commissioner’s records, Crawford applied for Social Security benefits in
16 October 2015. (ECF No. 5) In May 2016, the Commissioner denied Crawford’s claims, and mailed him
17 a notice of its decision. (*Id.*) Crawford claims that he never received this letter. (ECF No. 1-2) Rather
18 than inquire into the status of his administrative proceedings, Crawford filed this action. (ECF No. 1)

19 Crawford does not dispute the Commissioner’s representation that he did not seek agency
20 reconsideration, a hearing before an administrative law judge, or review by the Appeals Council before
21 filing this action. (ECF No. 11) As these steps are necessary prerequisites to federal court jurisdiction
22 over this action, this action should be dismissed. *Bass*, 872 F.2d at 833.

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