

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ROBERT E. DONALDSON,

Plaintiff,

-v-

COMMISSIONER OF SOCIAL SECURITY,

Defendant.



-PS-O-

DECISION AND ORDER
09-CV-6293L

Plaintiff has submitted to the Court a complaint challenging a decision of an Administrative Law Judge dated September 9, 2006. Plaintiff brings this action pursuant to 42 U.S.C. 405(g), seeking review of the Social Security Administrative Law Judge denial of his claim. For the reasons discussed below, plaintiff's complaint is dismissed for lack of jurisdiction.

Judicial review of a Social Security Administration **final** decision may be sought within sixty days of the receipt of the written notification of denial of the claim, or within such extended time as granted for good cause by the Commissioner of the Social Security Administration. See 42 U.S.C. § 405(g). There does not appear to be a final decision in this case for this Court to review. There is no indication in the complaint that plaintiff appealed the Administrative Law Judge's decision of September 21, 2006, or that the Social Security Administration Appeals Council decided an appeal of the Administrative Law Judge's decision, as is necessary to produce a final decision. 42 U.S.C. § 405(g); *Califano v. Sanders*, 430 U.S. 99, 103 n. 3 (1977); *Willis v. Sullivan*, 931 F.2d 390, 396-97 (6th Cir.1991) (A determination is only final after the Appeals Council has denied review

or decided the case after review). 20 C.F.R. § 404.981. In this case, because the plaintiff did not pursue an appeal to the Appeals Council, the plaintiff failed to obtain a final decision subject to judicial review and failed to exhaust his administrative remedies. See *Willis*, 931 F.2d at 397. The Court thus does not have jurisdiction to review the decision of the Administrative Law Judge. The complaint is dismissed without prejudice for lack of subject matter jurisdiction.

SO ORDERED.

Dated: July 13, 2009
Rochester, New York



CHARLES J. SIRAGUSA
United States District Judge