

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO. 3:05-CV-293-GCM-DCK**

KATHERINE E. WEAVER,)
)
 Plaintiff,)
)
 v.)
)
 MICHAEL J. ASTRUE,)
 Commissioner of Social Security,)
)
 Defendant.)
 _____)

ORDER

THIS MATTER IS BEFORE THE COURT on Defendant’s “Motion To Vacate The Order Of Remand And Reinstate The Case And Request For Leave To File An Answer” (Document No. 17) filed November 19, 2010. This matter has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. §636(b) and immediate review is appropriate. Having carefully considered the motion and the record, the undersigned will deny the motion.

This case was terminated on July 30, 2008, and remains closed. On November 10, 2010, Plaintiff Katherine E. Weaver initiated a new action in this Court, against the same Defendant, with the filing of her Complaint in Civil Action No. 3:10-CV-568-GCM-DCK. The new case appears to address the same causes of action as this case. To date, Defendant has not filed an Answer or otherwise responded to the new action.

Defendant filed the pending motion in this case on November 19, 2010, nine (9) days after Plaintiff filed her new action. On December 17, 2010, Plaintiff filed her “Response To Motion To Vacate The Order Of Remand And Reinstate The Case And Request For Leave To File An Answer” (Document No. 18). The response provides that Plaintiff does not oppose the pending motion.

Based on the circumstances, the undersigned finds that the motion should be denied, and this

case remain closed, without prejudice to Defendant filing an Answer in Civil Action No. 3:10-CV-568-GCM-DCK. The undersigned finds that the interests of these parties can be adequately addressed in the new case, and that the interests of justice and judicial economy favor such a result.

IT IS, THEREFORE, ORDERED that Defendant's "Motion To Vacate The Order Of Remand And Reinstate The Case And Request For Leave To File An Answer" (Document No. 17) is **DENIED**. Defendant shall file an Answer or otherwise respond to Plaintiff's Complaint in Civil Action No. 3:10-CV-568-GCM-DCK.

Signed: December 20, 2010



David C. Keesler
United States Magistrate Judge

